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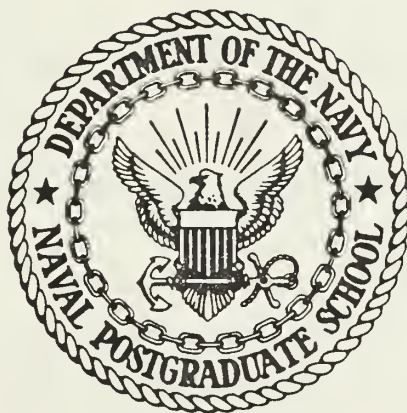
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THESIS

MAJOR CURRENT ISSUES IMPACTING GOVERNMENT
CONTRACTING AND ACQUISITION

by

Chris Robert Mc Kelvey

December 1984

Thesis Advisors:

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Major Current Issues
Impacting
Government Contracting and Acquisition

by

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Lieutenant, Supply Corps, United States Navy
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Submitted in partial fulfillment
of the requirements for the degree of

MASTERS OF SCIENCE IN MANAGEMENT

from the

NAVAL POSTGRADUATE SCHOOL
December 1984

ABSTRACT

The main objective of this research was to assemble and review those issues currently affecting the acquisition process in Federal Government, with emphasis on the Department of Defense. The individual topics discussed are: The Acquisition Process, Competition in Acquisition, The Federal Acquisition Regulation, and The Weapon System Warranty. In addition, a chapter is dedicated to conclusions and recommendations regarding the selected issues. A formatted Appendix is provided for inclusion into the Manual of Acquisition Topics, September 1983 edition, compiled by the Naval Postgraduate School, Monterey, California. The Appendix will add the topics discussed in this research to this most useful publication, bringing it up-to-date with current acquisition policy.

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I. INTRODUCTION

A. OBJECTIVES OF THE RESEARCH

The basic objective of this study was to assemble and study the issues most affecting federal procurement during 1984.

B. RESEARCH QUESTION

In light of the above objective, the basic research question addressed was:

What are the significant issues affecting Federal Government procurement functions during 1984, and how do they affect the Department of Defense contracting officer?

C. RESEARCH METHODOLOGY

The bulk of the material contained in this study was obtained through a comprehensive literature search. In addition to searching currently available acquisition literature, sources such as the Defense Logistics Studies Information Exchange (DLSIE) and the resources of the National Contract Management Association (NCMA) were used.

Current and proposed Department of Defense (DOD) acquisition instructions, directives, and regulations, as well as similar guidance from other agencies were consulted. Information from the Naval Postgraduate School Library, the Department of Administrative Science Acquisition Library,

and theses written by former Naval Postgraduate School students was compiled and reviewed.

Several symposiums and procurement-related meetings were attended in the interest of obtaining current data on contracting issues. Personal interviews were also conducted with personnel from all aspects of the military and civilian procurement arena.

D. SCOPE OF THE STUDY

The scope of this study is limited to four topics selected by the writer as being among the most significant issues affecting federal acquisition in 1984. These issues are:

- The Acquisition Process

- Competition

- The Federal Acquisition Regulation

- The Weapon System Warranty

The direction of the study was to provide the government contracting officer with a brief synopsis of the historical perspective, content, implications, and possible future direction of legislation affecting federal acquisition in the topical areas.

As a benefit of this study, the topics discussed are synopsized in Appendix A with the intent that it be included as a revision to the Manual of Acquisition Topics, a desk reference for acquisition managers maintained by the Naval Postgraduate School.

E. LIMITATIONS

Due to the nature of this study, only major issues affecting each topic are discussed. A comprehensive review of all related action and correspondence was deemed to be too voluminous, and would be detrimental to the scope of the study.

F. ORGANIZATION OF THE STUDY

This thesis flows in a logical sequence, beginning with an overview of the DOD acquisition process. Following is a discussion of the issues selected for review. Chapter VI will present the conclusions and recommendations of the study. An appendix follows providing a synopsis of the reviewed issues.

II. THE ACQUISITION PROCESS

A. INTRODUCTION

During the 1960s, increasing political pressure was being applied to Congress, the departments, and agencies of Federal Government to trim the costs of major military and space systems. The Department of Defense (DOD) was the major recipient of criticism regarding the perceived excessive expenditures of tax money for weapon system acquisition.

The primary complaint of numerous sources was that cost control measures employed by DOD were ineffective in holding down system acquisition costs.

B. THE EARLY YEARS

Robert McNamara, Secretary of Defense (SECDEF) during the early sixties, answered the charges of ineffective government control by introducing several wide-ranging policies to control the DOD system acquisition process. These innovations included incentive contracting, the planning, programming and budgeting system (PPBS) and several other concepts designed to give government contracting officials and managers clearer visibility and cost control over their programs [Ref. 1].

Throughout the 1960s other programs for cost control were introduced, including total package procurement and the

concept of life-cycle costing. The goal in all of these packages was the reduction of cost overruns in military procurement.

By 1969 new emphasis was being placed on the issue of defense acquisition and management. David Packard, the new Deputy Secretary of Defense, issued a memorandum in May of that year establishing the Defense Systems Acquisition Review Council (DSARC), which functioned within the Office of the Secretary of Defense (OSD) to advise the SECDEF on the status and readiness of each major defense system. This information was used by the top defense managers within OSD to coordinate and evaluate the procession of work from one phase of the acquisition process to another. This was a major deviation from previous policy in that under the Packard guidance, OSD became a monitoring and milestone decision-maker, rather than a detailed director of the defense systems acquisition process [Ref. 2].

Later in the year, a Blue Ribbon Defense Panel was commissioned by the President and SECDEF to examine the area of defense acquisition and management. To give the issue more "teeth," Congress created, via public law, the Commission of Government Procurement (COGP). This body was tasked to study and recommend methods to enhance the efficiency and effectiveness of economical government procurement [Ref. 3].

In December of 1972 the Commission made 149 recommendations: 82 required executive branch action and 67

required legislative action. The major outcome of the report led to the organization of the Office of Federal Procurement Policy (OFPP) and the formation of the Federal Acquisition Institute (FAI). The former establishment formulated government-wide acquisition policy and regulation, while the latter focused on enhancing acquisition education for the federal procurement workforce. [Ref. 4]

C. OMB CIRCULAR A-109

In 1976, many of the recommendations of the COGP became codified by the issuance of OMB Circular A-109 by OFPP, titled Major Systems Acquisitions. The thrust of this policy was directed at reducing federal program cost overruns. Within DOD, it assisted in diminishing the controversy voiced over the previous two decades on the necessity of acquiring new weapon systems. [Ref. 5]

While A-109 policy was closely patterned after the DOD directives of the 5000 series, it enhanced the requirements for top-level management within DOD to employ early direction of research and development efforts to satisfy mission needs and goals, along with the requisite management of the budgeting and contracting process [Ref. 6].

SECDEF responded to the policy by appointing the Under Secretary of Defense for Research and Engineering to the position of Defense Acquisition Executive (DAE). The DAE

was tasked with being the principle advisor to SECDEF for the acquisition of defense systems and material. In addition, SECDEF called for the revision of the DOD Directive (DODD) 5000.1 and Instruction (DODI) 5000.2, the primary policies for DOD major system acquisition. The revisions were aimed at requiring additional attention by DOD managers at the "front end" of their programs; i.e., in the establishment of the need for a program, and for the integration of the project with the capabilities, priorities, and resources of DOD as a whole.

While considered major achievements in the definition and refinement of the acquisition process, some people felt the publication of these policies led to emphasis upon studying the problems associated with procurement rather than actually implementing solutions [Ref. 7].

D. ACQUISITION IN THE EIGHTIES

In a memorandum to the Chief of Naval Material dated 25 November 1981, G. A. Sawyer, Assistant Secretary of the Navy (Shipbuilding and Logistics), stated: [Ref. 8]

...I believe it is vitally important that we rededicate ourselves to better business practices, and find improved ways to manage our industrial base. Achievement of the full effect of these principles, which are the cutting edge of the acquisition process, requires the assignment of our finest talent. We must always remember that our Systems Commands are just as much a part of the industrial base as the giants of industry. It is evident we are not going to achieve our objective of a 600 ship Navy by repeating the mistakes of the past.

These "mistakes of the past" were also recognized by the Deputy Secretary of Defense, Frank C. Carlucci, upon his appointment to office. On 2 March 1981, he chartered five working groups, involving all service branches and welcoming input from industry as well, to make recommendations regarding the improvement of the federal acquisition process. On 31 March the working groups reported their findings to Mr. Carlucci, who took the issues to the Joint Chiefs of Staff and other top management officials. [Ref. 9]

1. The "Carlucci Initiatives"

On 30 April Mr. Carlucci identified 31 actions for implementation by DOD to improve the acquisition process, adding one more action on 27 July. The major emphasis of the 32 actions was to achieve enhanced readiness, reduce acquisition costs, and shorten the acquisition time. Specifically, the actions, commonly known as the "Carlucci Initiatives," were designed to promote decentralization and participative management, improve the planning and execution of weapon system programs, and strengthen the industrial base that supports DOD. Increasing the readiness of weapon systems and reducing the administrative requirements in the acquisition process were additional goals of the actions. [Ref. 10]

The "Carlucci Initiatives," or the Department of Defense Acquisition Improvement Program (AIP) as it was formally known, generated much excitement in military acquisition

circles. Colonel G. D. Brabson, USAF, in his Autumn 1981 article in Concepts, describes the excitement as coming in part: [Ref. 11]

...by the fact that the services have been involved in the development of the actions from the first day. Thus, even the generation of the actions illustrates the participative management that Mr. Carlucci is seeking. The excitement also stems from the realization that, for the first time in many years, some real changes in the acquisition process may be possible.

By October of 1981, 11 of the 32 actions had been accomplished, the majority being in the area of decentralization and participative management. In addition, ten of the remaining actions were in the progress of being completed. Funding, always a major factor in the accomplishment of any program, was provided in the Fiscal Year 1982 Budget in amounts commensurate to the achievement of the remaining action objectives.

2. The "New" DOD 5000 Series

In March of 1982, another major revision of the DOD Directive 5000.1 series was issued. This revision focused on the decentralization of management responsibility in the system acquisition programs, and listed the following seven "Acquisition Management Principles and Objectives:" [Ref. 12]

Effective design and price competition for defense systems shall be obtained to the maximum extent practicable to ensure that defense systems are cost-effective and are responsive to mission needs.

Improved readiness and sustainability are primary objectives of the acquisition process. Resources to

achieve readiness will receive the same emphasis as those required to achieve schedule or performance objectives. As a management precept, operational suitability of deployed weapon systems is an objective of equal importance with operational effectiveness.

Reasonable stability in acquisition programs is necessary to carry out effective, efficient, and timely acquisitions.

Here the directive states that five concepts shall be followed to ensure stability is achieved. Effective long range planning, considering "evolutionary" alternatives in place of solutions at the frontier of technology, and estimating and budgeting in a realistic manner are the first three. Planning to achieve economical rates of production, coupled with the maintenance of surge capacity and realistic mobilization plans, and the development of an acquisition strategy early in the inception of each program were the final issues.

Next, the objectives addressed the following issues:

To promote efficiency in the acquisition process, authority will be delegated to the lowest levels of the Component at which a comprehensive view of the program rests. Responsibility and accountability must be clearly established.

A cost-effective balance must be achieved among acquisition costs, ownership costs of major systems, and system effectiveness in terms of the mission to be performed.

Cooperation with U. S. allies in the acquisition of defense systems will be maximized to achieve the highest practicable degree of standardization and interoperability of equipment, and to avoid duplication of effort.

To protect the public interest and foster competition, an ethical distance in business relationships between defense and industry must be maintained, without such buyer-seller relationship becoming adversarial.

Technical collaboration with industry must be maintained to achieve major system acquisition objectives and meet technological challenges.

Major deviations from previous policy (the 1980 versions of DODD 5000.1 and DODI 5000.2) were stated in this new Directive and the follow-on instruction, DODI 5000.2, issued 8 March 1983. First, in keeping with the decentralization concept, the mission needs determination was incorporated into the planning, programing, and budgeting system (PPBS). What was formerly known as the Mission Element Needs Statement (MENS), was now submitted as the Justification for Major System New Start (JMSNS) in the service Program Objective Memorandum (POM) package. Secondly, the new milestone of "program go-ahead" was not rigidly tied to the beginning of full-scale development. This allowed the DSARC a more accurate view of costs, supportability, testing, and other management issues prior to a decision to commit to the completion of full-scale development, production, and deployment. [Ref. 13]

Another major issue revised by the new policy was the decision to start production. This issue now rested in the hands of the service component, rather than with the SECDEF as under previous policy, as long as there was no breach of milestone II thresholds. Furthermore, the DSARC review thresholds for both Research, Development, Test and Evaluation (RDT&E) projects and production procurement actions were doubled to \$200 million and \$1 billion (Fiscal

Year 1980 dollars), respectively, thus decentralizing by one level of management a significant number of programs, as long as these thresholds were not breached [Ref. 14]. A final change was in the reduction in size and number of reports required for DSARC review. Starting with the JMSNS previously mentioned, this final change also included the compilation of three documents into one System Concept Paper at milestone II, the requirement validation point, and the elimination of one report and condensation of another summary at the program go-ahead point. [Ref. 15]

As further proof of the reduction of administrative overburden, DODI 5000.2 was changed, as stated by Under Secretary of Defense R. D. De Lauer in a 28 February 1983 memorandum to the DSARC and military Acquisition Executives: [Ref. 16]

...from a document containing both policies and procedures to one that describes the operation of the Defense Acquisition Review Council. Policy statements which are pertinent but are described in other DOD directives and instructions are now referenced only in DODI 5000.2 instead of being summarized as in earlier editions of the Instruction.

3. Thayer's "Consolidated Initiatives"

On 12 January 1983, Paul Thayer took the helm of the Deputy Secretary of Defense (DEPSECDEF) post, inheriting the AIP and becoming responsible for the continued progress of the project. Recognizing that the acquisition community would question whether the loss of the original designer of the AIP would have an impact on the future of federal

acquisition, Mr. Thayer promptly took the issue to task and published a "Second Year-End Report" on 8 June of the same year, sent under cover of a memorandum titled Guidance on the Acquisition Improvement Program (AIP) [Ref. 17]. Contained within the report was a summary of progress made during the first two years of the AIP. The report noted that of the original 32 "Carlucci Initiatives," 13 had been fully implemented, nine were in various stages of progress, and the remainder required further action [Ref. 18].

Consolidating 12 of the original initiatives, Mr. Thayer directed concentration on six areas to improve the acquisition process. Program stability, multi-year procurement, stability in production rates, realistic budgeting, improved readiness and support, and the encouragement of competition were specifically singled out for action. Mr. Thayer stated that these areas "offer both the greatest management challenges and the highest potential payoff." [Ref. 19] Primary implementation responsibilities for the consolidated actions were vested in the services, with assistance from selected OSD staff offices which had normal functional responsibilities in the respective area. High-level working groups were established in the six areas to monitor progress on the implementation and report to DEPSECDEF. While the initial "Carlucci Initiatives" were not forgotten by Thayer in his new drive for reform in the

acquisition arena, definite emphasis was placed on the six primary areas.

When looking at the Acquisition Improvement Program at this point, it becomes apparent that the underlying management philosophy of DOD is to enhance program stability and formulate realistic budget figures. In an article written for the November-December 1983 Program Manager, G. D. Brabson cites several other issues that can be viewed as being an insight to this philosophy. Reliability and supportability, competition, economic production rates, incentives, pre-planned product improvement, concurrency, tailoring, and initiative are named as the "key themes" of the current management philosophy of OSD. [Ref. 20]

This "flavor" of management philosophy was well recieved by the military departments, with evidence of the degree of reform being clearly indicated in various official correspondence and policies. Rear Admiral A. A. Giordano, SC, USN, Commander of the Naval Supply System Command, issued a memorandum on 6 January 1984 voicing his "Top Concerns" for management guidance. This list, an update of previous reviews in the area, indicated that the philosophy set out by OSD was being closely followed. Out of the top sixty concerns voiced by COMNAVSUPSYSCOM, over half were directly related to the concepts underlying the management guidance offered by OSD, with 8 out of the top 10 being

almost identical to those "key themes" postulated by Brabson. [Ref. 21]

4. AIP's Third Year

William H. Taft IV replaced Thayer as Deputy Secretary of Defense early in 1984. Soon after taking office, Taft released the third annual report on the DOD acquisition program [Ref. 22].

Stating that "considerable progress has been achieved" in the implementation of the AIP over the previous three years, Taft also voiced concern that "priority management attention" must be continued so that the momentum would not be lost [Ref. 23]. As proof of the progress, the new DEPSECDEF cited the greater visibility for managing support and readiness in the program budget review process, as well as the improvement in planning for competition at all levels of management. Additionally, Mr. Taft explained that greater expansion in the use of independent cost estimates for more accurate budgeting had been achieved.

Recalling the previous six initiatives set forth by Thayer, Taft added a seventh initiative, enhancing industrial base responsiveness, to direct attention to the nation's defense industry capability to meet surge production needs in the event of an emergency.

A more pressing issue addressed by Taft in the report was the topic of achieving program stability. Citing this

as the initiative posing the most challenge to management, Taft stated: [Ref. 24]

Despite the consensus that considerable savings can be achieved through greater program stability, we have not yet been able to find the solution to the complex problem of program instability.

Naming budgetary constraints imposed by both DOD and Congress as the prime causes of program instability, Taft notes that such constraints make it difficult to achieve economic production rates for all but a very few major programs. The new DEPSECDEF said that it would be "more important than ever" to eliminate the lower priority programs in order to achieve program stability and more "economic" production rates [Ref. 25].

Possible solutions to the problem are offered by the report, starting with the basic decision process of DOD. Aggressive decisions regarding vertical cuts, new starts, and long-range planning on behalf of DOD are required to achieve greater program stability. Other recommendations of the report include: exploring the feasibility of a two-year budget process; reviewing the Milestone II definition as set by DODD 5000.1, which the report concludes has not been used beneficially; studying the Air Force concept of baseline / cost cap approach to program management; and finally, the establishment of the initiative on industrial base considerations.

The report concluded that even though considerable progress had been made, it was too early to assess the final impact of the initiatives upon the quality of the acquisition process or the degree of defense readiness. Real savings experienced by the AIP initiatives were also stated as being elusive and difficult to assess, since those savings that are reported express cost avoidance associated with certain programmatic decisions. The net figure, which considered other program decisions inconsistent with management initiatives, was absent in the Service's report.

E. THE OUTLOOK FOR ACQUISITION

It is evident that the initiatives of the acquisition improvement program are viable and important to the future of federal procurement. Despite continued public exposure to the "horror stories" befalling government agencies in acquisition matters, headway is being made. Senator Dan Quayle, chairman of the Senate Armed Services Committee's Task Force on Selected Defense Procurement Matters, cited several of the "success stories" in an attempt to put the issue into perspective. [Ref. 26]

The value of competitive awards in DOD rose to \$47.8 billion at the end of Fiscal Year 1983, up from \$25.1 billion in Fiscal Year 1980.

The number of competitive awards in DOD has shown a similar jump from 4.4 million in Fiscal Year 1980 to 5.5 million in Fiscal Year 1983.

The renovated battleship Iowa was delivered by Ingalls Shipbuilding within budget and 2 1/2 months earlier than called for in the original contract.

Through the use of concurrenecy the Navy saved \$28 million in Fiscal Year 1983 by combining spare parts and production component buys on the F/A-18 aircraft.

The Air Force has implemented a successful program for aircraft engines that combines dual sourcing and data right provisions, two key programs in the AIP. In addition, the contractor provided the most extensive warranty to date on the engine.

The F-16 fighter program, currently under multi-year contract, has seen over 1,000 aircraft delivered at or below cost. The unit cost of the aircraft has decreased 7.4% in constant year dollars since 1983.

Greater emphasis is being placed on keeping down costs rather than buying material faster, which was prevalent in the mid-seventies. Personnel incentives are being offered and awarded to DOD employees who are active in keeping down costs via watching for mis-priced items and indications of contractor fraud.

An equal number of dissenting views can be found, however, that indicate serious problems still abound in the acquisition process. In an address to the Winter Regional Conference of the National Contract Management Association, held 9 February 1984 in Sacramento California, Eldon H. Crowell of the firm Crowell and Moring postulated that the enactment of legislation upon the acquisition process only worsens the ills that they were enacted to cure. Citing the Federal Acquisition Regulation (FAR), the process of certifying claims under the Contract Disputes Act, and the creation of the Inspector General for the Department of Defense as proof of his theorem, Mr. Crowell airs the view

that the acquisition process in federal government is becoming mired in complexity and legal litigation. [Ref. 27]

The FAR was intended to provide a uniform regulation for all federal contracts. However, according to Mr. Crowell, the FAR suffers from several shortcomings that result in a non-uniform system for procurement. While the regulation prohibits inconsistent agency supplements, the latitude provided to the agency head in implementing the FAR and adapting it to the particular needs of the agency may well grant expansion, proliferation, and redundancy at the local level. Mr. Crowell is concerned that the net result of this action is a non-uniform system, as each agency will interpret the FAR without regard to the interpretations offered by other agencies. [Ref. 28]

From a legal viewpoint, Mr. Crowell states that even though the FAR was rewritten for the sake of greater clarity, lawyers will argue that the different words used will have different meanings, even though no substantive changes were intended. [Ref. 29]

The issue of certification of claims is viewed by Mr. Crowell as being a nightmare of legal litigation and hardship. The courts will have to decide on all aspects of the issue before contractors have a clear-cut answer to the implications of the requirement. In the meantime, according to Mr. Crowell, contractors will have to certify "everything in sight" in order to escape legal complications from the

certification issue. He further states that the net result of this action is the bearing of enormous costs for taxpayers and contractors alike, since the Disputes Act has failed, in his view, in its most fundamental purpose: the facilitation of the just and expeditious disposition of contract disputes. [Ref. 30]

In regard to the Inspector General issue, Mr. Crowell states that Congress created the position without evidence that it was actually required. The underlying "rhetoric of the times" dictated that a Congressional vote against the IG would have been construed as a vote for "fraud, waste, and abuse." The creation of the IG and the resultant reporting requirements place it in direct competition with the Defense Contract Audit Agency, resulting in the two factions competing against each other for auditing "scoops." Mr. Crowell stated that this would only cause problems for both the contractors and the substantive defense programs as the two activities try to out-IG each other. [Ref. 31]

In conclusion, Mr. Crowell painted a gloomy picture of the future of the federal procurement process. Noting the historical "lack of trust" that Congress has in the federal acquisition system, and citing the increased legislative activity in procurement reform being indicative of an increasingly active role in legislating changes to the process, he feels that: [Ref. 32]

This trend will not abate for the foreseeable future. If my theorem about the negative effects of Congressional procurement legislation proves correct, the process will experience difficult times for years to come.

In an attempt to confront such questions raised by Mr. Crowell, much activity is undertaken by various groups within the federal acquisition arena. One such gathering involved members of the tri-services, the private sector, and other interested bodies, at the Acquisition Strategy Workshop, held 1-2 May 1984 at the Defense Systems Management College, Fort Belvoir, Virginia.

Recognizing that the formulation of a viable acquisition strategy is paramount to success in the pursuit of an efficient procurement process, the workshop focused on issues that addressed the importance of planning and developing an in-depth acquisition strategy plan early-on in the program. The workshop identified several important problems surrounding the issue, mainly in the area of assistance available to the program manager for guidance on establishing an acquisition strategy. The workshop noted that the Defense Systems Management College was in the process of compiling the Acquisition Strategy Guide, and hoped that this publication would assist the manager in addressing the problem. In addition, the workshop cited that to be effective, a strategy must be: [Ref. 33]

...robust to meet tomorrow's challenge, must be flexible but not break, must be valid but not direct, and must be clear but not precise.

Similar research is being undertaken in other areas of acquisition management, and must continue to be exploited to the maximum extent if a true reform of the federal procurement process is to be achieved.

III. COMPETITION IN ACQUISITION

A. INTRODUCTION

Rapid growth in federal procurement in the past decade prompted congressional action to provide leadership and coordination in the procurement function. Competition, long favored as the single best source of reducing costs in acquisition, was seen as an important key issue in the congressional reform program.

In a 14 March 1984 memorandum to all Naval Supply Corps Officers, Rear Admiral A.A. Giordano, SC, USN, Chief of the Supply Corps, quoted President Reagan as stating that competition "is the single most important source of innovation, efficiency and growth in our economy." The Admiral further stated that: [Ref. 34]

Competition makes good business sense, and I want to make it clear that increasing competition must be a primary objective of all personnel involved in logistics management.

B. COMPETITION IN ACQUISITION

Under generally accepted economic terminology, competition can be defined as the practice of two or more parties, acting independently, to secure the business of a third party under the most favorable economic conditions [Ref. 35].

The benefits of competition can be widespread and favorable to the American free enterprise system. Such benefits as the achievement of cost savings, a broadening of the industrial base, drawing participation from varied sources of technology, improving the technology acquired, and improving the delivery schedule can be achieved [Ref. 36].

However, competition can also pose several problems. The competition process, to be effective, requires an appreciable amount of time devoted to planning and other administrative matters. Additionally, the cost of injecting competition into what would have been a sole source procurement can be counter-productive to the overall financial health of a project.

In the long-run, however, it has been long recognized that competition is one of the few methods of ensuring that prices for goods are based on the needs of society, in this case, a strong national defense. Since this need is so great, it is possible that no price is too high to pay for such a necessity, and strong forces in the market may attempt to exploit this fact.

The philosophy of the market driving the price of an item and competition being the regulating force in society was postulated by Adam Smith, who stated: [Ref. 37]

An invisible hand will regulate the supply and demand for a good by establishing a price which will clear the market of all goods in a given time period.

An opposing view was presented in 1932 by Berle and Means, who found that corporate wealth, rather than being diffused and shared by many small firms, was increasingly being concentrated into the hands of a relatively small number of companies [Ref. 38]. The effect of this can be seen by the fact that over eighty percent of corporate wealth in the United States is now found in only twenty percent of the US corporations [Ref. 39]. The significance of this issue is the fact that the concentration of wealth gives a small number of firms the major leverage in control over prices. As stated by Colonel M.D. Martin and Major R. F. Golden, USAF, of the Air Force Business Research Management Center: [Ref. 40]

No longer does the market determine a market price in the majority of cases, rather corporate officials who produce and sell their products in a sole source (monopoly) situation develop prices which may or may not reflect cost plus a reasonable return.

Between these two types of market structure, pure competition and monopoly, there exist two other forms of marketing: oligopoly and duopoly.

Oligopoly can best be described as a market of few sellers and many buyers. The products are similar in form, fit and function, but are marketed as different via varied forms of advertising by the producers. One firm usually holds a slightly monopolistic control over the others and basically sets the price.

Duopoly is characterized by two firms existing in the marketplace, one of which is dominant and has control over price and industry operation. The other firm can survive solely with the support of an outside agency, i.e., government intervention. This type of market has been called "artificial" by economists, and is quite commonly found in the government weapon system environment.

In the post World War II marketplace, a large number of monopolistic firms were producing a majority of the goods for the military arena. In the years since, this has been the strategy of the defense industry since it is in their best interests to promote their research and development to the point where they are the only firm that can supply the needed technology in their state-of-the-art field. Under the high-tech defense market, this leads to a large number of sole-source procurements being made by the Government, which, in fact, may be acting as a monopsony due to the unique nature of the defense market place. This is fostered by the degree of specialization and market segmentation found in defense programs.

The crux of the matter is that over the years, fewer firms have been getting a larger share of the defense dollar, or better stated, the taxpayers' dollar. This leads to the eventual monopsony (the Government) dealing with a few select monopolies (the surviving defense contractors), or at best to a dual-oligopoly where segments

of government interact with a few suppliers. Either way, the small businessman, that most important cog in the nation's wheel of industrial fortune, is left out of the circle.

C. THE NEED FOR COMPETITION IN THE DOD

Early studies by the DOD indicated that major savings were possible through the introduction of competition. A 1972 study undertaken by the Army Electronics Command found: [Ref. 41]

Introducing competition into a sole-source procurement would result in an expected acquisition cost savings of 40 percent to 50 percent.

Colonel Martin and Major Golden list several studies undertaken between 1974 and 1979 that provide savings between ten and twenty percent when sole-source procurements were switched to open competition [Ref. 42].

A key issue here is that these studies did not fully explore the effects of the increased administrative costs that would arise from the competitive acquisition strategy. In fact, a recent GAO study on the cost effectiveness of Dual Sourcing concluded that there still remains a great deal of indecision regarding the financial effectiveness of competition [Ref. 43]. However, studies such as these acquired the ear of the congressional bodies, and the theory of increasing competition to decrease weapon system costs

was thrust into the forefront of a deficit-reducing social movement.

National security policy mandates that the nation remain militarily strong, and that the private sector is the source of required goods and services. The strength of the nation's defense relies heavily upon the technological expertise and competency of the defense industry, and their production of high technology weapon systems. Since competition has been historically viewed as an inhibitor to technological innovation, the push to "economize" weapon system procurement met with some resistance in DOD.

A major fear of the DOD hierarchy was that increased emphasis on competition would remove the impetus of innovative technological advances enjoyed by the "think tanks" and other brainstorming groups. These groups, made up of individual researchers or research teams, provided much of the unique skills required to develop "state-of-the-art" weapon systems. It was feared that competition during the research and basic conceptual phases would restrict the amount of scientific information made available to the government. [Ref. 42]

However, in later phases of weapon system development, namely the concept validation phase, competition may be highly beneficial to the attainment of technological supremacy. An example of this would be in the development and testing of a specific aircraft type. Non-competitive

contracts are let in the initial stages to different firms to produce an aircraft that conforms to basic conceptual goals. A competitive fly-off is chosen as the contracting method to delineate which aircraft would be selected for production. Thus, in the initial stages the innovative skills and resources of the firms are not hindered by strict specifications: rather they are allowed to improvise and push the frontier of technology in order to produce the best product for the specified goal. After the fly-off has demonstrated the acceptability of the product, competition can enter the contracting process in the selection of manufacturers to produce the components of the system. As further development and testing progresses, drawings and other technical data will standardize, allowing for further competition using advertised methodology.

Other measures were employed to induce competition into the weapon system acquisition process. Anti-trust action to change market structures and legislation to reduce merger activity indirectly affected DOD in their selection of contractors. Research activity verified that such competitive contracting approaches, disciplined adherence to formal source-selection procedures, increased use of component breakout, and broadened use of two-step formal advertising in the research and development arena will all enhance the economic reform of the acquisition process.

[Ref. 45]

In the final analysis, it became apparent to DOD that competition could and would be beneficial to the weapon system acquisition process if used in the proper context. Basic concepts exist that provide for economic return while allowing for technological supremacy when competition is applied in the proper stages of the acquisition process. Proper judgment would be required to apply competitive mechanisms in the appropriate phase, and planning and control would be vital to the proper execution of the program.

D. IMPLEMENTATION WITHIN DOD

In February 1982, the Office of Federal Procurement Policy (OFPP) submitted its second proposal to Congress regarding the development of a uniform, comprehensive, innovative procurement system within federal agencies. Following this submission, on March 17 1982, Presidential Executive Order 12352 was published, charging OFPP and the Office of Management and Budget (OMB) with the task of providing leadership, policy guidance, and coordination necessary to achieve the proposed system.

Specific problems identified by Executive Order 12352 included the inadequacy of existing competition in the acquisition process. In a General Accounting Office (GAO) report by the Comptroller General on progress of Federal

Procurement Reform under 12352, the following was stated regarding this issue: [Ref. 46]

Competition is curtailed by procurement complexities, funding constraints, restrictive specifications, limited market knowledge and planning, and absence of contracting officer independence.

DOD response to the Executive Order came on 30 June 1982, with a letter to the Deputy Director of OMB stating that the Under Secretary of Defense for Research and Engineering (USDRE) was appointed the Procurement Executive for DOD. His responsibilities included overseeing development of the agency procurement system, enhancing career management of the procurement work force, and evaluation and certification that system performance met with approved criteria.

Further indication that DOD was striving to meet the goals of furthering competition in the defense industry was in the publication of the Department of Defense Directive 5000.1 on 29 March 1982. This directive, titled "Major System Acquisitions," stated that as an acquisition management principle and objective: [Ref. 47]

Effective design and price competition for defense systems shall be obtained to the maximum extent practicable to ensure that defense systems are cost-effective and are responsive to mission needs.

A DOD-funded management study listed six factors that would have to be overcome to meet the objectives of increasing competition. These were: a significant lack of data; a lack of resources; the cost in both time and money

of acquiring new sources; the risk of getting new sources; obsolescence of standardized parts; and, the overall complexity of the acquisition process [Ref. 48].

DODD 5000.1 directed management attention to many of these deficiencies by requiring in-depth analysis and documentation of the acquisition process. The Integrated Program Summary (IPS), a detailed report on the total program from the initial threat assessment to proposed future implications of the project, required attention to planning and the impact of all aspects of competition to the project. (The IPS is submitted when requested by DSARC). Alternative systems were required to be explored, whether the sources existed or were being developed. Cost and Operational Effectiveness Analysis (COEA) was mandated, with attention directed to life cycle costs and affordability. Interoperability and standardization aspects were required to be discussed, with emphasis on the overall effectiveness of the system. In summary, the major system acquisition cycle included principles that were consistent with recognized reform actions needed to induce competition into defense procurement.

The Secretary of Defense, Caspar Weinberger, issued a memorandum on 9 September 1982, that voiced his concern over the competition issue: [Ref. 49]

I am convinced that we must give greater attention to obtaining competition in the placement of contracts by all Department of Defense components. The benefits

derived from competition are well recognized. Competition serves to reduce cost, improve quality, and enhance the industrial base that is so critical to defense mobilization. The policy to obtain maximum competition is prescribed by the Armed Services Procurement Act, and it is reiterated by Executive Order 12352 and at various points in the Defense Acquisition Regulation. It is our responsibility to assure that this policy is adhered to rigorously.

The Secretary continued by stating that all DOD components were to place maximum emphasis on competitive procurement, and that contracts would be placed on other than a competitive basis "only when clearly justified." [Ref. 50] His platform regarding the extent of support to competition was clearly put forth in the latter portion of the memo: [Ref. 51]

No type of purchase is automatically excluded from this direction to maximize competition and this direction applies regardless of the level of the requesting official or the importance of the subject matter of the contract. Particular attention should be given to those areas where the assumption traditionally has been made that competition is not available.

The Defense Acquisition Improvement Program (DAIP), first implemented in 1981, received renewed emphasis on the competition issue in mid 1983 [Ref. 52]. Of the 32 original acquisition improvement program initiatives, Deputy Secretary of Defense Paul Thayer decided that six issues were significantly important enough to address in a 5 May 1983 memorandum. Of these six issues, the encouragement of competition was listed as one of importance [Ref. 53]. A projected \$14 billion was expected to be saved over the span of the Five Year Defense Plan (FYDP) due to the DAIP reforms

alone, with competition in Naval contracts being cited as a large portion of the savings [Ref. 54].

However, more than token resistance remained in the field to the concept of increased competition. In a 7 April 1983 memorandum to the Assistant Secretary of the Navy (Shipbuilding and Logistics), the General Counsel of the Navy Walter T. Skallerup, Jr., reported that there still remained an "institutional bias for noncompetitive contracting." [Ref. 55] While the bias was not attributed to any single source, the record of Defense statistics demonstrated that competitive contracting was not as prevalent as was desired by the hierarchy of DOD. "Repeated policy pronouncements by senior Defense officials" and "case-by-case challenges by contracting officers" were cited by Skallerup as major contributors to this deficiency. Competition was being used as a last resort by the majority of contracting officers, Skallerup concluded. [Ref. 56]

1. The Navy Competition Advocate General

On 4 August 1983, Secretary of the Navy John Lehman officially stated the Department of the Navy Acquisition Management Policy. One of the 15 initiatives for immediate action included in this Policy was the establishment of the Department of the Navy Competition Advocate. While recognizing that much progress had been made in promoting competition over the previous two years, Secretary Lehman

also admitted that the resistance was significant enough to demand more attention to the issue. [Ref. 57]

The actual establishment of the position of Naval Competition Advocate was accomplished through the Naval Material Command (NAVMAT) notice 5430, dated 2 August 1983. In this notice, Commodore Stuart F. Platt, SC, USN, was named as a "general" in the Navy: the Competition Advocate General (CAG). His extensive list of duties included: [Ref. 58]

...devoting special attention to areas which offer [the] greatest opportunity for cost saving through increased competition, such as the POM and budget process, the ARB/CEB/DNSARC/DSARC process, acquisition strategies and plans, spares breakouts, technical documentation for procurement, and the quality of material. He will implement new competition initiatives for programs such as subcontracting (GFE/CFE), contractor support services, and resources for multiple sourcing.

To "get the ball rolling," President Reagan lent his support to the issue in a memorandum dated 11 August 1983. Addressed to the heads of all departments and agencies, the memo discussed his philosophy on competition and his concern regarding the loss of benefit from not actively competing federal procurement: [Ref. 59]

Competition is fundamental to our free enterprise system. It is the single most important source of innovation, efficiency, and growth in our economy. Yet, far too often the benefits of competition are excluded from the Federal procurement process -- a process which now results in expenditures of over \$160 billion annually. Numerous examples of waste and exorbitant costs due to the lack of competition have been detailed by the Congress and the press during recent months. ... I call upon each of you to assure that competition is

the preferred method of procurement in your department or agency.

As part of his concern over the lack of competition in Federal procurement, President Reagan went on to state that he had directed Don Sowle, the Administrator for Federal Procurement Policy in the OMB, to issue a policy directive on non-competitive procurement. The intent of the directive was to establish government-wide restrictions on the use of noncompetitive procurement.

A major new concept brought about by the policy directive was that any noncompetitive procurement under the circumstances allowed in the directive, above a dollar threshold established by the Agency Procurement Executive, must be approved by the Agency Procurement Executive before issuance of a solicitation. The war against noncompetitive procurements was really starting to escalate.

With Presidential support, Congressional mandates, and a bevy of newly appointed command competition advocates to support him, Commodore Platt set forth his "marching orders" and attacked the competition issue head-on.

In his first letter to the officially designated competition advocates, the Navy CAG stated that: [Ref. 60]

Competitive procurement represents the extension of the principle of fairness into the defense acquisition process. The public trust placed in those who obligate public funds includes the assurance that a fair opportunity will be provided to all who can meet the government's needs.

One effective way to significantly reduce costs, and thereby be able to afford our defense requirements, is

to increase the use of competition. The Navy is now emphasizing competitive procurement strongly.

Commodore Platt went on to note that in private industry, which is not subject to such mandates on increasing competition, the use of competition is seen extensively in fostering the best economic posture possible. He professed: [Ref. 61]

Making use of the entrepreneurial spirit to achieve an efficient allocation of resources as firms pursue a competitive strategy in product development, production and pricing will allow us to purchase the right product at the right time for the right price in the most efficient, effective manner.

It must be noted at this point, however, that the term "competition" when used by private industry is not necessarily used in the same context as it is by DOD. Under commercial context, "competition" may refer to the practice of competing as few as two select firms against each other, regardless of the number of qualified suppliers available. This is not the concept used by DOD, which views competition, to be fair to all, as being among the total population of qualified suppliers.

As guidance for the new competition advocates, several specific actions were offered to assist in promoting the "institutional advocacy for competition." [Ref. 62]

First, the competition advocates must underline their commitment to the promotion of competition by action. Their position must be such that everyone in the acquisition

process recognizes that sole-source is to be considered only as a last resort.

Since all sole-source justifications are reviewed by the competition advocates, Commodore Platt directed that they use all resources available to ensure that the justification is challenged wherever possible. Independent determination of adequacy for sole-source procurement is paramount.

Competition advocates are directed to encourage planning of each procurement to the maximum extent possible. CAG instructed early involvement in the acquisition process to ensure that competition is addressed as a strategy.

Expansion in the use of commercial specifications was another issue addressed by Commodore Platt. Technical personnel were expected to develop specification packages with the intent of fostering competitive procurement. Command competition advocates are directed to discourage the use of restrictive or overstated government specifications and contractor-proposed engineering designs which would inhibit subsequent competitive procurement.

Making the performance of market research a routine part of the procurement process was listed as another duty of the local advocate. Public Law 98-72 mandates that any proposed noncompetitive purchase over a certain specified level be published in the Commerce Business Daily with the intent that the government could then be made aware of any previously unknown source. Such market research as more

frequent use of "sources sought" notices and other tapping of available resources were directed.

Other issues addressed were checking follow-on buys, a close reevaluation of contractors' claims to proprietary rights in data, and ensuring that the program management personnel are giving adequate opportunity to be trained in competitive practices.

One of the most fruitful areas for competition outlined by Commodore Platt was in the area of contractor support services being awarded as sole source. Breaking the dependence on long-lived single-source contractor support requires much planning and some time to achieve properly, but must be addressed.

Likewise, unsolicited proposals by contractors offer the potential to become sole-source contracts. Close examination of the material or services offered is directed to ensure that a source may not be available on an unrestricted basis from other sources.

As a final guidance, Commodore Platt directed that the creation and maintenance of "aggressive interactive dialogues and liaison with industry as well as within the competition advocate community" be achieved [Ref. 63].

2. Standardization Through Competition

In a letter dated 5 April 1984, Commodore Platt addressed the Navy competition advocates on the subject of standardization.

Long thought to be mutually exclusive with intelligent competition, standardization was being increasingly seen throughout the American marketplace. In fact, the practice was observed to be thriving in a highly competitive environment. Such items as spark plugs, computer chips, and even personal computers were standardized and yet sold very well in the competitive market.

Commodore Platt stated his position on the implementation of standardization in Naval acquisition:
[Ref. 64]

One objective of standardizing our weapon systems, subsystems and components is to reduce total costs by limiting the number of unique items, including equipment furnished by prime contractors, which have to be bought, managed, and used. Standardization certainly reduces logistics costs because of easier maintenance and the resultant lower training, manpower, support equipment, and publications costs. Another benefit of standardization is the improved efficiency and effectiveness which comes from fleet users having common equipment to operate. Here we see the benefit of life-cycle costs.

The CAG further explains that standardization was not new to the American defense industry, reaching back as far as 1798 when Eli Whitney manufactured interchangeable parts for muskets. Any part made by his process would fit in any of his muskets of the same design, since by using special jigs and design patterns for lay-out, all parts made were as identical as possible. Hence the first mass-produced weapon system in America. [Ref. 65]

Commodore Platt identified two programs in the DOD that were aimed toward achieving defense standardization. The first, the Department's parts control program, was directed to use existing standard parts in the design of new equipment. While industry complained that this inhibited technological advancement, DOD stated that stable design and complete specifications found in existing parts were of more importance. The net effect on competition under this program was that after a component becomes standardized, the overall quantity to be bought generally increases as it is used in various applications. The presence of proven components, stable designs, and complete specifications lend themselves to an effective competitive acquisition program. [Ref. 66]

The second program in DOD was the "Like Equipment" concept, where all ships, aircraft, or other system of a specified class or type, use essentially the same standard equipment. Configuration control is the key element in this program, requiring indepth advance planning and foresight on the part of the program managers. Through buying all at once or on a multi-year basis, a program manager could buy several years' worth of component parts for a particular ship class, and take advantage of lower acquisition costs through large-volume buying. [Ref. 67]

"A generic approach you should consider is to achieve standardization not by identical equipment but by equipment

which has the same form, fit, and function," directed Commodore Platt [Ref. 68]. Specifying input, output size constraints and other critical requirements early-on in a procurement action would allow competition without using a "build-to-print" approach on the part of the contractor. Thus, the contractor can utilize his own production process and adapt it to the specifications of the project, thereby reducing costs significantly over having to follow a mandated manufacturing process that may not be compatible to his operation. This approach is best suited to the manufacture of consumable-type items, which are normally produced in large quantities.

a. The Navy BOSS Program

The Navy Buy Our Spares Smart (BOSS) program was implemented to enhance acquisition of spare parts. One of its initiatives was the emphasis on the DOD parts control program to help keep acquisition costs of new parts to a minimum. This program, commented Commodore Platt, was particularly useful in new programs where initial development of a standard is easier than would be found in a more advanced project [Ref. 69].

b. The Navy SHARP Program

Commodore Platt urged competition advocates to familiarize themselves with the Standard Hardware Acquisition and Reliability Program (SHARP), an extension of the 16-year-old Standard Electronic Modules (SEM) program

developed by the Army. Under the SHARP concept, a limited number of "standard electronic packaging" hardware would be established. These packages would be designed to accommodate new technology and would be both testable and repairable. Alternate sources would be required for all of the hardware as well. The result, as stated by the CAG: [Ref. 70]

...will be cost reduction through elimination of duplicate design or development efforts and competitive reprocurement via validated design data packages. SHARP is an excellent example of a program where competition is both promoted and facilitated through standardization.

E. THE EFFECT OF COMPETITION ADVOCACY

In an 11 May 1984 address to the National Contract Management Association in Cherry Hill, New Jersey, Commodore Platt discussed the accomplishments of his competition advocacy program.

Citing the upswing in the nation's economy and the increase in growth rates, Commodore Platt indicated that an expansion of competition was bringing a "burst of innovation, increased efficiency, and lower costs." [Ref. 71] This robust industrial view coupled with the upswing in the economy led the CAG to profess that Navy managers are presented with a "most favorable climate" to increase competition in procurement [Ref. 72].

Commodore Platt went on to address the accomplishments observed in the "quest for increased competition." First,

during Fiscal Year 1983, \$13.2 billion of the Navy's total procurement dollars were awarded competitively. This amounted to a 40% increase over the Fiscal year 1982 level [Ref. 73]. A second accomplishment was noted in the competing of the first 15 follow-on ships of the "Perry" class (FFG), resulting in a saving of over \$100 million [Ref. 74]. A similar competition between two major shipbuilders for a larger ship, the Aegis Cruiser, netted a \$100 million reduction over an earlier sole-source award for three ships [Ref. 75].

The issue of contractor data rights was also addressed. Commodore Platt assured his audience that the Navy was making inroads in obtaining data rights to allow competitive reprocurment. Previously, contractor proprietary data prohibited follow-on procurement from other than the original source. Citing a case with Pratt and Whitney, the CAG stated that the Navy worked out a program with the contractor to permit competitive acquisition of replacement parts for aircraft engines from their subcontractors using the prime's technical data. Similar projects were being favorably recieved by other industrial firms. [Ref. 76]

In closing, Commodore Platt observed that the initial perceived institutional bias against competition may be dropping from sight. Companies are recognizing that the "entrenched" sole-source contractors are not invincible, and

that competition in government acquisition was, in fact, good business [Ref. 77].

In his "First Year Report for Competition Advocates" dated 13 August 1984, Commodore Platt discussed his views on the competition advocacy program with his troops in the field.

A major issue in this first "annual report" was the requirement to "look to the future." Several concepts were stated. First, competition advocates were directed to pay particular attention to contractor support services. Next he addressed the issue that while industry was cooperating with the competition program, Navy contracting officers should be prepared to "proceed on their own" if competition was not forthcoming from industry. Thirdly, the CAG pressed the advocates to obtain technical data wherever possible to permit second sourcing.

An aggressive breakout of spare parts to competition was directed. Due to high visibility by the press, this area was given added emphasis. Next, early planning for competition in the acquisition strategy was ordered. Coupled with this was the direction to encourage maximum possible subcontractor competition, enlisting the assistance of the other contract administering activities such as the NAVPROs and SUPSHIPS.

In summary, Commodore Platt stated that competition was here to stay, and that the "powerful market force of

competition" was bringing about very real and visible savings [Ref. 78].

F. THE COMPETITION IN CONTRACTING ACT OF 1984

The Competition in Contracting Act of 1984, (Division B, Title VII, of the Deficit Reduction Act of 1984 [Public Law 98-369]), was a compromise of S. 338, H.R. 5184, and H.R. 2545. It makes amendments to the two primary procurement directives of the Federal Government, the Armed Services Procurement Act (ASPA) and the Federal Property and Administrative Services Act (FPASA). The Act, known as "Title VII," applies to all solicitations issued after 31 March 1985.

Both the ASPA and FPASA were amended to enhance the use of competitive procedures to obtain full and open competition. A major boost in accomplishing this goal was the elimination of preference for formal advertising, which places competitive proposals on par with sealed bids. In fact, Title VII establishes competitive proposals and sealed bids as the two competitive procedures to be used by Federal Government [Ref. 79].

Sealed bids must be used if four factors are met. First, sealed bids must be used if time permits the solicitation, submission, and evaluation of the bids. Second, sealed bids must be used if the award is made on the basis of price and other price-related factors.

Third, if it is not necessary to conduct discussions, sealed bids must be employed. Finally, sealed bids must be used if there is a reasonable expectation of receiving more than one bid. If these criteria can not be met, competitive proposals must be requested. [Ref. 80]

However, in a major deviation from previous law, Title VII no longer mandates that the procurement official document his reasons for choosing competitive proposals over sealed bids, or vice versa [Ref. 81]. This makes it quite difficult for the prospective contractor to contest the method of solicitation, and requires that the contracting official use prudent and subjective judgement in the selection. The intent of this change to acquisition policy is to give government procurement personnel much the same latitude that private industry enjoys in the source-selection process.

Another change made by Title VII is that the head of an agency may use competitive procedures, but exclude a particular source, in order to establish or maintain an alternative source or sources. This can be done only if it will result in maintained or increased levels of competition and will reduce overall procurement costs. In addition, two national defense-related stipulations are attached. The head of the agency may exclude a particular source if it is in the interest of national defense to have the facility available in case of national emergency or industrial

mobilization, or if it is in the best interest of national defense to establish or maintain an essential engineering, research, or development capability. [Ref. 82]

Title VII allows the head of any agency to limit competition to small business concerns only, but only if all firms within the category are allowed to compete. This does not affect the provisions of Section 8(a) of the Small Business Act [Ref. 83].

Sole source procurement is specifically addressed in Title VII, making such a procurement practice unlawful for the first time unless one of seven specific exceptions are met. The seven exceptions are: [Ref. 84]

Property or services are available from only one source and no other property or services will satisfy the needs of the agency.

The agency's need is of such unusual and compelling urgency that the United States would be seriously injured unless the agency is permitted to limit the number of sources. However, maximum competition practicable must be obtained.

It is necessary to award to a particular source/sources in order to maintain a facility in case of national emergency or to achieve industrial mobilization or to establish or maintain an essential engineering, research, or development capability provided by an educational or other non-profit institution or an FFRDC.

It is required by the terms of an international agreement or treaty or by written direction of a foreign government who is reimbursing the agency for the cost of the procurement.

The statute expressly authorizes or requires procurement through another agency or from a specified source or the agency's need is for a brand-name commercial item for authorized resale.

Disclosure of the agency's needs would compromise national security unless the number of sources is limited. Again, maximum practicable competition must be obtained.

The head of an agency determines it is necessary in the public interest to use other than competitive procedures and gives Congress 30 days written notice before award. This duty is non-delegable.

The use of a sole-source procurement must be justified in writing, and approved at varying levels on a case-by-case basis. The validity of the certification will be an issue in the disputes process, as noted in an article in Contract Management: [Ref. 85]

In view of the jurisdictional (and related) effects of noncertification or improper certification on contractor claims under the Contract Disputes Act, it will be interesting to see how the courts handle challenges to sole-source procurements based on lack of or insufficient certification by contracting officers. If the Court of Appeals for the Federal Circuit follows its same course, a sole-source procurement without a proper certification would be a nullity even if otherwise properly approved.

Another change brought about by the Act is the reduction of the uniform threshold for demanding cost or pricing data from \$500,000 to \$100,000. In addition, in a fairly vague statement, Title VII allows an agency head to "require cost or pricing data for procurement actions below the threshold." [Ref. 86] This raises the question of whether the Act authorizes or permits the use of a certification and contract adjustment provision when the contract or subcontract is less than \$100,000.

Title VII makes it mandatory for the head of an agency to: [Ref. 87]

Specify agency needs and solicit bids/proposals in a manner to achieve full and open competition;

Use advance procurement planning and market research; and

Develop specifications so as to obtain full and open competition (functional specifications are preferred.)

While not a new concept, this issue emphasizes the desire of Congress for federal procurement to conform more to the actions enjoyed by the private sector. By using such "tools" as market research and advance procurement planning, government procurement will more efficiently use the private marketplace.

In amending the DFPP Act, Title VII requires that an advocate for competition be established in each procuring activity within the agency. This requirement is in addition to those previously required in each executive agency. While the basic duties remain the same as on the executive level, the additional requirement for reporting the advocate's accomplishments "up the chain" to the agency level for an annual report to Congress imply that procurement personnel may be rated for their efforts to promote competition. While this implication has been present in acquisition management for several years, it is further amplified by the language of Title VII. [Ref. 88]

G. THE FUTURE OF COMPETITION

While recognizing that competition is not the answer to all procurement actions, the general approach of DOD is to compete wherever practical. If the commercial sector is competing their purchases so extensively, then government should strive to do likewise.

All is not well in the competition camp, however. Recent discussions have centered around the issue of buying-in and the submission of below-cost bids. Playing "low-ball" is viewed by many as not an unsavory practice. In fact, the General Accounting Office "expressly regards a below-cost bid as a boon to the taxpayer." [Ref. 89]

Since the defense industry often counts its gains and losses in the number of contracts awarded each year, the attainment of a certain number of procurement actions may be vital to the life of a defense contractor. Historically, winning the contract has often entailed a "bet-your-company" strategy, since often the winner-takes-all, and lucrative follow-on contracts historically abound in the "out" years. Costs can be recouped in these later contracts, or, if the company also maintains commercial sales, prices can be raised in this sector to offset the losses in the defense work.

The down-stream effect of this action may not be conducive to the goals of competitive procurement. Once a contractor has won the bid, at an unrealistically low price,

he can reasonably assure himself that he is a "sole-source," the only supplier of the material. Further along in the program life he proposes changes, and prices these changes on a noncompetitive basis, thereby allowing him to recover his "buy-in" losses. Thus, a low bid and initial cost savings have resulted in cost growth of the weapon system.

Several solutions have been offered to this dilemma affecting the competition issue. Among them, the concept of pursuing "real competition" throughout the life of the contract appears to have the most merit. Under this principle, dual or second-sourcing or some form of parallel development will keep changes to a minimum, with those changes that do arise being competitively processed. [Ref. 90]

Another proposed solution would be for requiring more emphasis on an independent cost estimation or audit. While independent estimation is done under present legislation, the call is for the use of independent cost estimating teams at all levels, thus providing a better "before and after" view of the entire process. [Ref. 91]

A final, and most radical solution offered, calls for the formulation of an independent, civilian-run acquisition system for all of government. This would entail elevating the status of career acquisition personnel, indepth training, and the requirement for program managers to be assigned to a project for a minimum of four years, or on a

milestone-to-milestone basis, to prevent loss of continuity and accountability. [Ref. 92]

The future of the competitive process rests upon the effectiveness of the programs currently in use. One must keep in mind, however, as Commodore Platt has often observed, that the end goal of competition in defense acquisition is to reduce costs, improve contractor performance, and strengthen the industrial base. Most importantly, this must go hand-in-hand with enhancing the warfare capability of the United States. [Ref. 93]

IV. THE FEDERAL ACQUISITION REGULATION

A. INTRODUCTION

Prior to April 1, 1984, there was no single volume containing all government-wide acquisition regulations. Three basic regulations, the Defense Acquisition Regulation (DAR), the National Aeronautics and Space Administration Procurement Regulation (NASA PR), and the Federal Procurement Regulation (FPR) formed the basis for all government procurement guidance.

The intent of the Federal Acquisition Regulation (FAR), is the integration of these three regulations into one clear, understandable document designed to make it easier for government employees to procure goods and services and for contractors to conduct business with the Federal Government.

B. PROCUREMENT PRIOR TO THE FAR

In a 1972 report to Congress, the Commission on Government Procurements proposed the concept of a government-wide, uniform system of procurement regulations, which would eliminate the proliferation of regulations confronting the procurement personnel of the Federal Government and private industry. This mulititude of "red tape" was viewed as one of the most pervasive problems facing the procurment function of government. [Ref. 94]

Investigations by the Office of Federal Procurement Policy (OFPP) indicated that, in addition to the three basic regulations, there were over 874 sets of procurement regulations totaling over 64,000 pages, many of which were repetitious, duplicative, and overlapping, causing considerable confusion [Ref. 95]. Such a proliferation of regulations also had the effect of adversely affecting communications between federal agencies, and greatly compounded the management of already complex interagency contracts.

Congress had also seen the necessity for an improved, single set of regulations, and in August of 1974, it enacted the Office of Federal Procurement Policy Act, Public Law 93-400. One of the principle articles of this act was to "establish a system of coordinated - and to the extent feasible - uniform procurement regulations for the executive agencies." [Ref. 96]

The drive behind the development of the FAR can best be described as set forth in the Federal Acquisition Regulation Questions and Answer paper published by the Federal Acquisition Institute of the OFPP in September 1983: [Ref. 97]

The FAR, then, was designed to eliminate conflicts, redundancies and inconsistencies in the existing regulations; provide users with a single set of regulations that are well-written and organized logically; reduce excessive paperwork; and make it easier to do business with the Federal Government.

C. DEVELOPMENT OF THE FAR

Since the FAR was conceived with the goal of making it a usable document that is simple to understand and use, a careful, analytical approach was taken to keep what was already well written, and revise what was unnecessarily complex and wordy. The language, format, and organization of the document were to become the major issues of the development.

The project officially began in January of 1978 when the Department of Defense and the General Services Administration agreed, with the assistance of NASA and other procuring agencies, to take the lead in developing the regulation. Understandably, this undertaking was of monumental proportions, required high level support from every agency involved, and demanded the utmost cooperation in order to be successful.

The project was divided into three phases. Phase One, under the direction of DOD and GSA, established project offices which drafted and published the initial regulation for industry and agency review. During Phase Two, industry and agency comments were reviewed by OFPP, which sent them to the appropriate drafting office for consideration and evaluation. The FAR drafting groups then evaluated all comments and recommendations, recording on a permanent record their disposition and the rationale behind it. Phase Three was titled the "Executive Review," in which the three

regulatory agencies - DOD, GSA, and NASA - assisted by other agencies, reviewed the FAR draft to ensure that it was suitable for operational use in the field.

The FAR became effective on 1 April, 1984, being published as Chapter 1 of Title 48 of the Code of Federal Regulations (CFR). Customer agencies were afforded the ability to implement their own FAR supplement, however these regulations were not to conflict with, restate, or paraphrase the FAR. They were to conform to its numbering system, and were also to be published in Title 48 of the CFR. Since the purpose of the FAR is to reduce the redundancy and regulatory proliferation in government guidance, these restrictions also apply to lower level regulations within agencies as well. In addition, three measures of control assured that the implementing regulations would not proliferate. They were: (a) internal agency management reviews, audits, etc.; (b) Office of Management and Budget, Office of Information and Regulatory Affairs (OIRA) mandatory regulatory review under Public Law 96-511 (the Paperwork Reduction Act); and, (c) public review and comment on proposed revisions, as well as on agency supplementing or implementing regulations.

D. ORGANIZATION OF THE FAR

The material in the FAR was organized to promote clarity and ease of use. To better fit the normal flow of the

acquisition process, the various topics were arranged in generally the same order that one would follow in the preparation of the procurement workpackage.

The FAR is divided into eight subchapters designated by the letters A through H. Each of these subchapters is further divided into parts, numbered consecutively from 1 to 53. (Numbering does not begin anew with each subchapter, however.) The parts are then further broken down into subparts, sections and subsections. These are further divided into paragraphs, subparagraphs, and subdivisions.

To accomodate the simplified restructuring of the regulations, a new numbering system was developed. The first digit(s) represent the part number, followed by a decimal point. The numbers after the decimal point represent the subpart, section, and after a dash, subsection and any further definition.

To illustrate, part 52, subpart 2, section 27, subsection 1 appears as 52.227-1. The beauty of this system lies in the fact that any portion of the FAR can be uniquely identified and located with a minimum of trouble, a process that could not be easily done under the previous systems.

1. Content of the FAR

The eight subchapters, their parts and content are as follows:

Subchapter A - General

Part 1 - Federal Acquisition Regulation System. The authority for and method of issuing the FAR, its applications, administration, deviations, agency regulatory guidelines, contracting authorities and responsibilities.

Part 2 - Definitions of Words and Terms. This part covers all commonly used terms and words which would require definition. Specific terminology applicable to certain situations are found in their respective parts.

Part 3 - Improper Business Practices and Personal Conflicts of Interest. Standards of conduct, contracts with government employees, gratuities, reporting of suspected unethical practices, and other topics of proper business behavior are included here.

Part 4 - Administrative Matters. Part 4 covers documentation of contract actions, contract execution, contract distribution, procedures for the safeguarding of classified information, contract reporting, records retention, and contract file maintenance.

Part 5 - Publicizing Contract Actions. Located here are the requirements for issuing synopses of proposed purchases, synopses of contract awards, release of pertinent information, and procedures for paid advertisements.

Part 6 - Reserved. This part is reserved for future use.

Subchapter B - Acquisition Planning

Part 7 - Acquisition Planning. This part lists those topics which must be considered in developing the acquisition strategy.

Part 8 - Required Sources of Supplies and Services. Part 8 covers several preference programs of which the contracting officer needs to be aware. Included are required sources and procedures to follow such as: Federal Supply Schedule contracts, acquisition of Automatic Data Processing Equipment (ADPE), utility services, excess personal property, and the leasing of motor vehicles.

Part 9 - Contractor Qualifications. This part includes topics relevant to the selection of a responsible contractor. Such information as contractor team arrangements, first article testing, debarment and suspension, organizational conflicts of interest, and production, research and development pools are listed.

Part 10 - Specifications, Standards, and Other Purchase Descriptions. Covered here are those unique items peculiar to government acquisition; the specifications and standards that accompany the purchase document.

Part 11 - Acquisition and Distribution of Commercial Products (ADCOP). This is a new area that was not covered in either the DAR or the FPR. It sets forth the government policy of commercial product procurement and distribution.

Part 12 - Contract delivery and performance. All aspects of contractor performance are covered in this part: time of delivery, liquidated damages, priorities, variation in quantity, and stop work orders.

Subchapter C - Contracting Methods and Contract Types

Part 13 - Small Purchase and Other Simplified Purchase Procedures. This part covers all aspects of dealing with small purchase, including imprest fund purchases, charge agreements, and the methods for solicitation, evaluation, and award of small purchases. In addition, this part covers a topic brought from the DAR: Fast Pay.

Part 14 - Formal Advertising. Here will be found the Uniform Contract Format, and other regulations covering formal advertising.

Part 15 - Contracting by Negotiation. The general requirements for negotiated procurement are listed here. Namely: authority for negotiation, solicitation procedures, treatment of unsolicited proposals, competition, source selection, make-or-buy, price negotiations, protests, mistakes, and pre-award and post-award contract modifications.

Part 16 - Types of Contracts. This part covers the different types of contracts available to the contracting officer. Also listed are the various types of pricing arrangements.

Part 17 - Special Contracting Methods. Part 17 covers special requirements related to such programs as multi-year contracting, the use of options, leader-follower contracting, and contracting for operation of government-owned or controlled facilities.

Part 18 - Reserved. This part reserved for future use.

Subchapter D - Socioeconomic Programs

Part 19 - Small Business and Small Disadvantaged Business Concerns. Covered here are those regulations concerning small business and small disadvantaged business previously found in Section I, Part 7 of the DAR and FPR.

Part 20 - Labor Surplus Area Concerns. This is also a relocation from the DAR and FPR, namely from Section I, Part 8.

Part 21 - Reserved.

Part 22 - Application of Labor Laws to Government Acquisitions. This part covers the labor laws and national policies related to labor which impact on acquisition.

Part 23 - Environment, Conservation, and Occupational Safety. Such topics as pollution control, energy conservation and hazardous waste are covered in this part.

Part 24 - Protection of Privacy and Freedom of Information. This part covers the two major statutes in this area: The Privacy Act and The Freedom of Information Act.

Part 25 - Foreign Acquisition. Part 25 covers the Buy American Act and its follow-on, the Trade Agreements Act. In addition, it covers topics relevant to acquisition that falls under the International Government Procurement Code.

Part 26 - Reserved.

Subchapter E - General Contracting Requirements

Part 27 - Patents, Data, and Copyrights. Located here is the discussion of government patent policy, technical data rights, processing of licenses, assignments and infringement claims, and policy for and rights involved in the acquisition of computer software.

Part 28 - Bonds and Insurance. This part includes a discussion on bonding requirements, the role and responsibilities of sureties, and other topics previously found in Section X of the DAR and FPR.

Part 29 - Taxes. Also a relocation of the material found in Section XI of the DAR and FPR. It deals with the regulations affecting federal excise tax and state and local taxes.

Part 30 - Cost Accounting Standards. Another relocation, this one from Section III of the DAR and FPR. It covers disclosure requirements, contract requirements, and the administration of Cost Accounting Standards.

Part 31 - Contract Cost Principles and Procedures. Uniform cost principles formerly found in Section XV of the DAR and FPR are covered.

Part 32 - Contract Financing. This part covers the financial issues of acquisition management: i.e., advance payments, progress payments, guaranteed loans, and contract debts.

Part 33 - Disputes and Appeals. Part 33 includes a discussion on the legal aspects of the dispute and appeal process as it applies to the procurement arena.

Subchapter F - Special Categories of Contracting

Part 34 - Major System Acquisition. Included in this part are those topics relevant to the acquisition of major systems. Of special interest is the acquisition strategy involved.

Part 35 - Research and Development Contracting. The often difficult concepts of this type of contracting are covered. Special attention is placed in the defining of requirements and objectives, patent and data rights, and the goal of R & D contracting efforts.

Part 36 - Construction and Architect-Engineer Contracts. Covered are the many unique aspects of construction and architect-engineer contracting.

Part 37 - Service Contracting. This part contains the many classes of services that were separately listed in the DAR.

Part 38 - Federal Supply Schedule Contracting. Contained in this part is a description of the Federal Supply Schedule program, followed by the procedures and responsibilities involved in its operation. Several directives from government agencies have been compiled into this part of the FAR.

Part 39 - Management, Acquisition, and Use of Information Resources. Part 39 provides the user with a practical guide which directs the contracting officer to the Federal Property Management Regulations for the requirements of ADPE contracting.

Parts 40 and 41 - Reserved.

Subchapter G - Contract Management

Part 42 - Contract Administration. The many administrative actions required in contract administration are combined and listed here. Such actions as post-award orientation, correspondence and visits, disallowance of costs, production surveillance, negotiating overhead rates, pre-award surveys and other relevant topics are covered. This part implements DFPP Policy Letter 78-4, which directed inter-agency cooperation in the area of contract administration.

Part 43 - Contract Modifications. The issuance of change orders and the negotiation process for supplemental agreements are covered in this part.

Part 44 - Subcontracting Policies and Procedures.

This highly debated portion of the FAR covers the review of contractor purchasing systems and the subcontracting arena.

Part 45 - Government Property. This part combines a tremendous amount of material that was found throughout the DAR. Such topics as contractor use and rental of government property, competitive advantages derived from such use, management and accounting of government property, and reporting requirements are covered in one, simple-to-read area.

Part 46 - Quality Assurance. Part 46 covers all aspects of the basic quality assurance requirements, including: inspection and acceptance, material inspection and receiving reports, warranties, and contractor liability limitations in regard to government property.

Part 47 - Transportation. This part contains policy relevant to the use of various methods of shipping and transportation administration. Items such as FOB origin/destination, government Bills of Lading, contracting for transportation, and the use of U.S. flag vessels and air carriers are discussed here.

Part 48 - Value Engineering. This part covers, in brief format, the information required in the value engineering clauses.

Part 49 - Termination of Contracts. Another relocation part, this one includes the material formerly found in Section VIII of the DAR and FPR.

Part 50 - Extraordinary Contractual Actions. Part 50 implements Public Law 85-804 into the FAR, which had been previously located in Section XVII and other areas of the DAR and FPR.

Part 51 - Use of Government Sources by Contractors. Contractors use of Government supply sources and interagency motor pool vehicles are covered in this part.

Subchapter H - Clauses and Forms

Part 52 - Solicitation Provisions and Contract Clauses. Possibly the most major structural change in the acquisition regulations can be found in this part of the FAR. This part is divided into three major subparts covering instructions for use, texts of all provisions and clauses, and a very useful set of matrices to determine applicable provisions and clauses to each type of contract or solicitation.

Part 53 - Forms. A major emphasis of the drafting groups involved with this part of the FAR was to develop a set of forms that would be easier to understand and use, and that would not become outdated as quickly as those forms used in the past. Numerous forms previously used were reviewed for content and applicability, with the result being a reduction in the number of forms to be used under the FAR.

This part is divided into three subparts. The first discusses the newly introduced standard and optional use forms program. The second prescribes the FAR forms and directs the reader to the area of the FAR where its usage is discussed. The third subpart illustrates the forms prescribed or referenced in the previous subpart. It is important to note that not all forms mentioned throughout the FAR are located in this subpart - only those forms which are considered to be of general purpose in nature are included.

2. Maintenance of the FAR

FAR subpart 1.2 describes the FAR maintenance system. Two councils have been named to jointly maintain the FAR: the DAR council (DARC), with NASA included, and the Civil Agency Acquisition council (CAA), chaired by GSA. The CAA council has 12 civil agencies included that provide major procurement missions to the Federal Government.

These councils will solicit comments from all interested parties and coordinate agreement on the proposed changes to the regulation. Many view the process of the coordination function to be one of the weakest areas of the FAR. Since the function of the councils is to provide a single best recommendation for a change, the magnitude of the differences of opinion may stymie the process for an unreasonable amount of time.

However long it takes to issue a proposed change, the final recommended revision will be submitted to the FAR Secretariat at GSA, who will review and implement the change if found to be acceptable.

3. Supplementing the FAR

While the FAR is meant to be a single source of guidance for acquisition matters, it was recognized by the drafting committees that agency-specific regulations would have to be allowed.

In order to keep the system as simple as possible throughout its applications, agencies can not repeat or revise material contained in the FAR. The format and numbering scheme set forth in the FAR Part 1 must be strictly adhered to. Only those unique, internal requirements necessary to implement the FAR in each organization will be allowed in its FAR supplement, and they will be published in assigned chapters of Chapter 1, Title 48 of the Code of Federal Regulations. Only through strict compliance with this policy will the proliferation of regulations and supplements confronting the procurement personnel be kept to an absolute minimum.

E. IMPLICATIONS OF THE FAR

Both industry and government officials closely monitored the implementation of the FAR on 1 April 1984, watching for indications that the transition period might be more difficult than had been planned.

Government officials who worked closely with the development of the FAR passified industry by explaining that the FAR contained no major policy changes from prior regulations. However, major transition problems were expected and found in the civilian government agencies and those contractors who had dealt almost exclusively with the Federal Procurement Regulation (FPR). Those personnel who had worked with the other regulations found the transition much easier, requiring "only" getting used to the new format and semantics of the text. [Ref. 98]

Early views from government contracting officers were as expected. Since the FAR contained no new contracting tools for them to utilize in the performance of their jobs and the DAR "milestones" were still present - there was considerable resistance to change. However, one of the most troublesome parts of the old systems was finally resolved: the FAR had an index that was usable by all procurement personnel.

Acquisition managers in the non-DOD government areas encountered considerable problems adjusting to the new policies and procedures. Such things as getting used to detailed uniform contract formats, DOD-oriented contract administration groundrules, and new acquisition planning policies were major hurdles for previously FPR-oriented procurement specialists.

Non-government acquisition managers faced major administrative problems, mostly concerning training their contract personnel and answering the multitude of questions that came from all corners of their business world. Prime contractors faced the explicit problem of trying to figure out how to "flow down" all of the FAR clauses to the subcontractor level.

1. Impact on Subcontractors

The implementation of the FAR was most implicitly felt at the subcontractor level, since this group had historically little expertise in the regulation arena [Ref. 99]. A second problem area was that industry felt that the government did not understand the problems inherent with subcontractor relationships, and therefore had done little in the writing of the FAR to preclude difficulties in this area. In fact, the industry view was that government felt this was an area of responsibility for the prime contractor, and not ripe for government intervention. [Ref. 100]

2. FAR Solicitations

Another area in which controversy has arisen is in the treatment of solicitations by the FAR. Ron Smith, a Purchasing Manager with Grumman Houston Corporation, quotes NCMA National President Kenneth M. Jackson in the June 1984 issue of Contract Management, the journal of the National Contract Management Association, on his views of the concept

of a more flexible procurement process administered by a highly-skilled workforce: [Ref. 101]

One of the problems in federal procurement is that the process is often mechanical instead of judgmental, with an emphasis on procedure over substance. We seem to be making the administrative necessities outweigh the substance. And when people do their jobs by rote, the system gets into trouble.

Recognizing this limitation in the existing procurement policies, the drafting committees suggested true reforms in the solicitation process. The Proposal for a Uniform Federal Procurement System ("Proposal") issued by DFPP in February of 1982, promised to provide contracting officers with a new tool to replace the constraints placed on them by the then-existing choice of procurement strategies: formal advertising versus competitive or non-competitive negotiation. The tool: [Ref. 102]

Two equally valid methods of solicitation will be used to obtain competition. They equate generally to the solicitation procedures for Formal Advertising and competitive negotiation....

Bidding Without Discussion will be used when the government requirements and the terms and conditions of the solicitation can be sufficiently described to allow the timely preparation and evaluation of bids on a common basis without the need to hold discussions with bidders. A public bid opening will be held and award made to the low responsive and responsible bidder.

Bidding With Discussion will be used when it is necessary to discuss the requirement or terms and conditions after receipt of bids but prior to contract award. The bid opening will not be public. Award will be based on the evaluation factors set forth in the solicitation.

These proposed reforms gave contracting officers the opportunity to overcome the problems that had hindered the

solicitation process for many years. However, they were faced with massive challenges before they could become available to the contract managers.

A prime example of the challenge to be faced was offered by C.W. Borklund in the February 1983 Government Executive: [Ref. 103]

Procurement regulations and contracting options are like a carpenter's box of tools; and the chief challenge to the acquisition executive is to make the right tool selections for the job he has to do. That's valid enough, of course, but where the theory can crumble into confusion is when higher authority starts second-guessing that executive's choice of tools.

Mr. Borklund's observation appears to have come true. The FAR, as printed, did not make the sweeping reforms promised in the Proposal. Only one major change was made to previous regulations, according to Ron Smith: The revision of the contract award, Formal Advertising Clause (52.214-10) [Ref. 104]. The new clause reads "The government may... accept other than the lowest bid." Mr. Smith views this "reform" as a very "fragile and limited" tool to be available to the contracting officer, but one which must be capitalized upon in order to become effective: [Ref. 105]

Those simple words [The government may accept other than the lowest bid] open an opportunity for awards in the true best interest of the government. The extent of the opportunity will be defined in the actions of government Contracting Officers in the coming months. They may choose to utilize this new tool to the maximum possible extent. Or they may choose to do business at the same old stand.

3. Contract Administration Under the FAR

An often neglected but vital portion of acquisition management is the performance of the contract administration function. Contract administrators were elated when Part 42 of the FAR gave this area such accessibility and visibility, finally giving it the "teeth" that they felt were required to protect what they thought were the government's best interests and to oversee the contract function.

Contract administration requires an organized management approach which includes adequate procedural guidance, training, and resources in order to be effective. Of vital importance to this effectiveness is the requirement that it must have the total interest and attention of management. While it was recognized that DOD had implemented most of these elements in its coverage of contract administration in the DAR, other agencies did not share such an interest.

While serving as chairman of the Inter-Agency Contract Administration Subgroup, Task Group 4, Gunther Lange was tasked with reviewing the contract administration function over the entire federal spectrum as a part of implementing Executive Order 12352, Federal Procurement Reforms. He noticed: [Ref. 106]

Besides observing a general lack of management interest in contract administration by many agencies, we also found an urgent need for policy and procedural guidance to the "hands-on" people in the field. As it happens, most federal agencies don't have a formally structured contract administration function nor a dedicated workforce performing it, and as an acquisition function

it was generally neglected and occasionally treated with disdain.

Mr. Langes subgroup made several recommendations to change this view towards contract administration, including the preparation of several cases for submission to OFPP which outlined the required changes necessary to bring the FAR "up to speed."

Major issues coming out of FAR Part 42 include: assignment of contract administration; effective communication between all players; and negotiating advance agreements for independent research and development / bid and proposal costs.

It is imperative that all personnel concerned with the contract administration function be aware of the duties and responsibilities of those parties involved. Not only does this need to be known for the allocation of manpower resources, but also for the formulation of long-term relationships during the life of the contract that are beneficial to the effective administration of the project. The Contracting Officer, the Contract Administration Office, and the contractor must all be aware of each other's role, function, responsibility, and authority.

The FAR relaxes the restrictive language of the DAR in this area, giving the Contracting Officer much more latitude in the delegation of contracts to other offices. The DAR allowed this action only upon approval by a higher level. The only exception to this policy is in the delegation of

contracts to which Cost Accounting Standards (CAS) apply. These must be delegated for CAS administration only. A final area of interest under Subpart 42.2 is in the supporting of contract administration of subcontractors by the contracting office. This subpart reiterates previous policy that the prime contractor should be responsible for this area of administrative management.

Subpart 42.4 covers another area in which potential problems in contract administration can be avoided: communication. All parties involved in the contract administration function must have a clear understanding of "the big picture;" a knowledge of each other's responsibilities, duties, authority and limitations is invaluable to the interchange of information required to keep a contract effective. Under this Subpart, which is again a compilation of previously published guidance, the Administrative Contracting Officer is required to be informed of and monitor all correspondence, and know the details of plant visits in order to ensure that "constructive changes" to the contract do not proliferate, which could eventually cause serious administration problems if allowed to proceed unchecked.

The final subject of Part 42 that is of interest to this discussion is that of negotiating advance agreements for Independent Research and Development (IR&D), and Bid and

Proposal (B&P) costs. This area was not covered well in either the DAR or the FPR.

Under Subpart 42.10, any contractor receiving payment in excess of \$4 million in a fiscal year from any government agency for IR&D and B&P costs is required to negotiate an advance agreement with the Government that will set a ceiling for allowing IR&D and B&P costs for the following fiscal year. Of further interest is the fact that if an agreement can not be reached, the contracting officer is authorized to make a unilateral determination of the amount to be paid for IR&D/B&P costs. An appeal may be made for such a determination, but it must be made separate and distinct from board or court appeals under the Contract Disputes Act of 1978.

F. THE COMPETITION IN CONTRACTING ACT OF 1984

The Competition in Contracting Act of 1984 (Division B, Title VII, of the Deficit Reduction Act of 1984 [Public Law 98-369]), herein called "Title VII", applies to all solicitations issued after 31 March 1985. Several issues in this Act affect the procedures as set forth in the FAR.

The first issue to be discussed is the change to Competitive Procedures. In response to the promises of OFPP in the 1982 Proposal, Title VII establishes two competitive procedures: "sealed bids" and "competitive proposals." Sealed bids must be used if time permits the solicitation and evaluation process to be completed. Award is on the

basis of price and other price-related factors, if it is not necessary to conduct discussions, and, if there is a reasonable expectation of receiving more than one sealed bid. Any deviation from these points requires that competitive proposals be requested.

The bottom line of this policy change is to give government procurement personnel much the same latitude as individuals in the private sector in choosing a source-selection method. Hopefully, this will result in a more efficient procurement action, but it will also require effective use of subjective judgment on behalf of the contracting officer, who will not be required to document his or her exercise of discretion in choosing the procurement procedure.

A second issue is the requirement in Title VII for federal agencies to utilize advanced procurement planning and market research to achieve full and open competition through the use of proper specifications and timely solicitations. This provision, while not new to procurement policy, emphasizes the importance of bringing federal procurement policy into closer conformity with the private sector where such practices have proven to be effective.

The drafting of specifications is addressed to emphasize their importance to full and open competition. Title VII mandates that specifications should be written in terms of function, performance, or design requirements. As with the

previous issue, this is not new to the acquisition arena, but has been emphasized to ensure enhanced attention is given to the subject.

A major change brought about by Title VII is the reduction of the uniform threshold for submission of cost or pricing data from \$500,000 to \$100,000. While significant, it does not provide definitions of the terms "cost data" or "pricing data" and provides no guidance for use of either. In addition, the statute does not address whether authorization is granted for the contracting officer to use a certification and contract adjustment provision when the contract or subcontract action is less than \$100,000. It merely states that the contracting officer may request it.

Another area of change is in the small purchase environment, where Title VII raises the ceiling on small purchase by civilian agencies to \$25,000. While the FAR contained provisions for special procedures relating to small purchase actions, Title VII appears to direct its comments toward the civil branch of federal procurement.

In addition to the areas discussed above, Title VII made several other sweeping changes to federal acquisition management. However, since this chapter is primarily a discussion of the FAR and its implications to federal procurement, further review of Title VII will be found elsewhere in this paper.

G. THE FUTURE OF THE FAR

The issuance of the FAR has provided a starting point for greater uniformity in procurement regulations. The success of this major endeavor, however, rests in the implementing agencies and their strict adherence to the policies set forth.

While most federal agencies are still "getting acquainted" with the new regulation, it is evident that the simplified nature of the FAR and its "user-friendliness" have won-over many an acquisition manager and procurement specialist alike. "Down-range" impact of the document will depend to a great extent upon the feedback that these people will provide OFPP, and the suggestions offered to keep the regulation current with accepted acquisition practices.

V. THE WEAPON SYSTEM WARRANTY

A. INTRODUCTION

Section 794 of the Fiscal Year 1984 Department of Defense Appropriations Act requires that written guarantees be obtained in connection with the procurement of weapon systems. The section provides that before DOD can obligate or spend appropriated funds for the procurement of a weapon system, the contractor must warrant that the system and its components are designed and manufactured to conform to performance requirements, and are free from all defects in materials and workmanship that could affect performance.

This statutory guarantee requirement produced dramatic and complex changes in the acquisition of weapon systems, their subsystems, and components. Current legislative action continues to bring attention to this issue, as can be seen by the 1985 Defense Appropriations Act.

B. DEVELOPMENT OF THE GUARANTEE ISSUE

A desire for product reliability has always been in the forefront of consumer thoughts. People simply want an item that they paid money for to work as designed! While this issue has surfaced numerous times in the private consumer arena, it was not until the middle 1970s that the Federal Government began to take a hard look at the problem "in house."

Rising weapon system costs and decreased reliability were significant issues facing Government program managers during this period. A strong, albeit uninformed voice from the constituents "back home" urged congressional action when increased tax expenditures were being spent on repair of expensive Defense Department material and equipment. The average taxpayer could not comprehend why a million dollar radar set was not provided with a guarantee to "work as intended or be replaced" by the supplier, when almost any household article, regardless of purchase price, was backed by some form of consumer protection plan. The bottom line was that Government would reduce the cost of defense and increase efficiency by implementing warranty requirements that would ensure equipment would be better made and maintained. Hence, the cost of procurement would be less and life cycle costs would be lower. Thus, the leading issue in the campaign towards Government warranty legislation became to foster reliability and provide a method to indemnify the consumer.

The Air Force implemented expanded use of warranties under DAR Section 1-324 in 1978 when General A. D. Slay, Commander of the Air Force Systems Command, ordered application of guarantee clauses to procurement programs such as the Air-Launched Cruise Missile and Advanced Medium Range Air-To-Air Missile [Ref. 107]. This and other Government programs provided the impetus for the development

of the Air Force Product Performance Agreement Guide (PPAG), a joint venture of Government and industry, and for the establishment of the Product Performance Agreement Center at Wright-Patterson Air Force Base, Dayton Ohio. Private industry input to these projects was significant, providing valuable information both to the PPAG and to the Center from a source that had extensive expertise in the subject.

The Army published AR 702-13 in January of 1981. This regulation set forth the policies for the Army warranty program, but met with little support in the field. Implementation and administration of the directive was left almost entirely with the local commander, resulting in widespread differences in the effectiveness and emphasis of the regulation. [Ref. 108]

Aside from the ambitious Air Force program, the state of warranty guidance was dismal at best in the rest of DOD. Field contracting activities complained that warranty provisions were inadequate and overlooked an important source of improvement in the federal acquisition process. Due to this pressure, the DAR Council reviewed the area in their evaluation of the material to be included in the FAR. [Ref. 109]

The initial draft of the FAR showed little change in the wording of the warranty clause, but did provide guidance for contracting personnel about employing a warranty, and for

command designation of a warranty control team to administer warranties and warranty claims.

The real drive behind warranty reform came from Senator Mark Andrews in his amendment to the Fiscal Year 1984 Department of Defense Appropriation Act, H.R. 4185. This legislation, provided in draft form to industry for comment in mid-1983, was written with an intent to create a commercial marketplace environment out of the DOD acquisition process. Industry replies were often strongly worded, indicating that the proposed legislation would only widen the rift between Government and the private sector, and that it was "hopelessly out of phase with economic reality...and common sense." [Ref. 110]

Nevertheless, industry objections quickly died away when the press, still glowing over their "scoop" on spare part price fleecing by industry, indicated an interest in further tarnishing the private sector by pursuing the warranty issue on the front page.

Given this reprise, Senator Andrews took the opportunity to further push the proposed legislation, successfully defending his case before the Senate Appropriations Committee and on the Senate floor. By late 1983 congressional support clearly backed the new warranty legislation, and on 8 December the bill was implemented into law.

C. THE WARRANTY PROVISIONS

The Fiscal Year 1984 Defense Appropriations Act, as implemented by the 14 March 1984 DOD Guarantee Policy Guidance, requires all DOD fixed-price type production prime contractors for weapon systems to provide a guarantee provision [Ref. 111].

The guarantee must be one of two mandated types. The first, a conformance to performance requirement warranty, requires that if a test or demonstration is required by the contract, a failure to pass this evaluation will result in the contractor taking all required action necessary to conform the item to contract specifications. All costs incurred during this performance would be born by the contractor. A second implication of this type of warranty is that if a performance requirement details an operation of the system for a specified period of time, and the system fails during this performance period, the same contractor efforts are required to bring the item into conformance.

The second type of guarantee required by the Act is that at the time of delivery to the Government, the contractor warrants the weapon system and each significant component of it to be free from defects in material and workmanship that may cause the system to fail the specified Government performance objectives.

In both of these types of warranties, the contractor is obligated to reimburse the Government for any costs incurred

by the Government in procuring such parts from another source or making the necessary repairs, if the contractor does not take prompt action to achieve the specified performance requirements himself. The Act specifically states that the Government may claim expenses caused by defects in material and / or workmanship, but is silent about claiming reimbursement for administrative costs. It can be perceived, however, that since the Government can claim "costs incurred...and the cost of making or procuring necessary repairs," [Ref. 112] administrative costs are included.

An important issue raised in the Act is that of contractor liability in regard to Government Furnished Property (GFP) and Government Furnished Material (GFM). Section 794 (b) states: [Ref. 113]

A written guarantee...shall not apply in the case of any weapon system or component thereof which has been furnished by the Government to a contractor.

Serious implications accompany this issue when there exists a mixture of contractor and Government material in a weapon system. It is probable that entire weapon systems may be held up in trial and evaluation when a dispute arises over the extent of coverage by a contractor for such a hybrid system. The Government has the legal authority to force the contractor into completing work on the system and bring it into conformance to the performance specifications. However, a long and costly court battle may ensue that could

have been avoided had both parties carefully negotiated the issue and declared the extent of coverage pertaining to the hybrid system.

Section 794 (c) states another issue of the Act. The Secretary of Defense may waive the warranty requirement if he determines that it is "in the interest of the national defense or would not be cost effective." [Ref. 114] It further states the the Secretary must notify the Commitees on Armed Services and Appropriations of the Senate and the House of Representatives in writing of his intention to waive the requirement.

D. THE DEPARTMENT OF DEFENSE RESPONSE

While some of the "troops in the trenches" were asking for stronger language in a warranty clause, the hierarchy of DOD was not prepared to so quickly implement the legislation.

Prior to the signing of the law, representatives of industry met with officials from DOD to discuss the implications of the proposed legislation. Many concerns were voiced, with the primary impediments being definition of terms, insurance ramifications, and the effect of the new law on the spare parts breakout program.

As a result of these meetings and further discussion within DOD, Deputy Secretary of Defense Paul Thayer on 16 December 1983 issued a 90 day blanket waiver of the requirement to all DOD [Ref. 115]. It was hoped that this

extension would give the department time to resolve the difficulties it was having with the legislation, and provide an implementation that would have minimal disruption.

Concurrently with this waiver, a "Notice of Draft Guidance on Written Guarantees" was developed and subsequently published in the Federal Register on 20 January 1984. This notice requested that comments on the guarantee issue be submitted to the Office of the Secretary of Defense within 30 days. [Ref. 116]

The notice created a furor from both the sponsor of the original legislation, Senator Andrews, and from industry as well. Senator Andrews listened to the position of OSD and did acquiesce on some issues, however he was adamant on the issue that the warranty provision not be regarded as an "either or" proposition. The Secretary of Defense was provided with an ability under the initial legislation to waive a warranty requirement where it would not be cost effective. However, Senator Andrews replied: [Ref. 117]

The language clearly states that no funds will be appropriated by this or any other act to build a weapon system unless the prime contractor or contractors provide the Government with a written guarantee. This is now the law enforcing the warranty provision.

Comment to the draft was divided, with the majority of the input coming from large defense prime contractors, small businesses, and special interest lobby groups. The positive comments centered around the reliability and enhanced performance implications of the warranty legislation, in

addition to the view that warranties were commonplace in the civil marketplace and that Government should take advantage of this proven program.

Negative replies covered the realm from small business to large industry, with most of the comments directed to the financial implications.

Small Business stated that they could not assume the risk of the initial warranty costs, and that tooling maintenance after component delivery could cause financial distress. It was widely felt that enforcement of the warranty would drastically increase contract administration costs, and that a proliferation of disputes and lengthy litigations may evolve. In the design areas, most contractors felt that it was improper to force a contractor to guarantee a directed design, and that mandated warranties inhibited innovative technology.

OSD considered these comments, and described what it felt were the major issues. Harvey Gordon, Assistant Deputy Under Secretary of Defense for Research and Engineering (Acquisition Management), aired these views in an address to the National Contract Management Association Regional Symposium, 10 February 1984 at Sacramento, California [Ref. 118].

Mr. Gordon agreed with a majority of industry that the language of the legislation was imprecise and required further definition. Several issues were viewed as being

"incorrect presumptions which underlie the legislation." An example of this was given in the implicit prohibition of concurrent production with development of a weapon system. In aircraft construction, it is common to award production follow-on contracts prior to operational test and evaluation, thus preserving the continuity of the production process.

The issue of warranting a directed design by a second source manufacturer was raised, voicing the opinion that this was highly difficult for the contractor to efficiently accomplish. Industry was highly polarized on this issue, and Mr. Gordon agreed with them. Forcing a contractor to guarantee a piece of equipment for which he had no direct design involvement was seen to be akin to making an assembler of electronic devices warrant that the supplied components, all of unknown origin and reliability, would perform to a certain specification. One can not guarantee what one does not know!

Allowing a contractor to configure his production to a performance requirement rather than dictating the method of production was another issue raised by Mr. Gordon. It was felt that in allowing this, the contractor would be relieved of all legal liability to maintain a baseline configuration, and he would have the unilateral right to change the design to conform to his production requirements. OSD felt that this would severely restrict interchangeability in

equipments, and would adversely affect the spare parts support programs.

This brought another implication to light, that of the difference between the commercial and defense marketplace. While the commercial arena has total control over the design and configuration process of their own projects, and can thus provide their own operating and maintenance schedules, such an environment does not extend to the military market.

Administrative costs were viewed by Mr. Gordon as being enormous. Deployed maintenance, contractor contract execution procedures, and general administrative costs would pose a detriment to the effectiveness of the program.

A similar administrative complication seen by OSD was in the magnitude of the number of separate warranties that could be involved in a single project. Mr. Gordon cited the B-1 bomber as an example: With over 19,000 separate contractors providing time and material to the aircraft system, managing an equal number of different warranty programs would be highly taxing and extremely expensive.

A final objection raised by Mr. Gordon was the fallacy that enforced warranty legislation would enhance the quality and effectiveness of a weapon system. OSD felt that such regulation only served to further limit the legal liability of the contractor, rather than expand it.

The overall thrust of the Gordon address was to convey DOD desire for the repeal of the law, or to have it reworded to better fit the concerns of the military [Ref. 119].

This address by Mr. Gordon was warmly received by the commercial sector, but little mention of it made the news. Repercussions on the issue came soon, however, with the apparently contradictory statements of Secretary Weinberger before the Senate Budget Committee and Senator Andrews on 6 February. Weinberger assured them he was doing everything possible to ensure the legislation would work in the DOD. This statement had to be withdrawn in short order, when pressure from the press and members of Congress forced Secretary Weinberger to admit that DOD was not totally infatuated with the legislation [Ref. 120].

The net effect of the dismay shown by DOD prompted a Senate Armed Services Committee investigation into the provisions in late February, resulting in the realization that there had been inadequate hearings held before the enactment of the legislation, and that, in fact, complex issues remained to be resolved. Further hearings were directed.

On 14 March 1984 the final formal DOD guidance regarding the implementation of the warranty provision was issued. While not containing any unexpected material, it did prompt the ordering of a GAO review to determine compliance with the original legislation.

The result of this investigation, issued on 24 April 1984, helped the DOD effort by stating that it found significant imprecision in the language of the law, and that overall, the guidance clause issued by DOD was consistent with the requirements of the original legislation [Ref. 121].

1. Final Policy Guidance

The final Guidance Memorandum issued by DOD made several notable changes to the draft Guidance Memorandum. Three major areas are addressed: the waiver of the application of the guarantee provision to all cost reimbursement type contracts; a refinement of the definition of a weapon system; and the authorization for contracting officers to use greater discretion in tailoring the guarantee to particular components of a weapon system.

Deputy Defense Secretary William H. Taft IV stated that the waiver of cost reimbursement type contracts was made due to the decision by DOD that such a warranty action would not be cost effective, and therefore under Section 794 subsection (c), notice was given in the final Policy Guidance to Congress and the House that such a waiver was granted [Ref. 122].

Critical changes were found in the definitions of certain items in the final Guidance. Under "weapon system" the inclusion of software, ordnance, and related support equipment was notably absent. Also not attached to this

term are such items as "small arms, torpedos, bombs, and artillery." However, it must be noted that any or all of these items can be included under a warranty provision if a determination is made that the inclusion is necessary to create an effective guarantee for the entire weapon system.

Another term, found especially troublesome by industry, was "component." The final Guidance appeared to narrow the definition somewhat, but the language was seen as being unclear and slightly ambiguous. Basically, it defines a "component" as any assemblage "that is treated as a significant element of the weapon system." [Ref. 123] The latter phrase was added in the final Memorandum, and was seen by industry as DODs' way of saying that the guarantee should "not be applied to the nuts and bolts level." [Ref. 124] It was observed that the language would compel weapon system contractors to "flow down" to all subcontractor and vendor levels guarantees paralleling those required by the Act.

The third issue of the final Guidance Memorandum, tailoring the guarantee to particular components or areas of a weapon system, is important in that it separates the research and development phase from production. Paragraph 1 (c) of the Memorandum expressly excludes from the guarantee requirements any contract in which the "principle purpose ...is research and development." [Ref. 125] However, it

goes on to provide for partial guarantee coverage where a contract entails both RTD&E and production.

As an aid to the contracting office, the final Guidance provides a "model clause" to be used in fixed-price-type contracts. This does not exclude the writing of "custom" guarantee clauses however, as the memorandum explicitly states that, "where different types of requirements are present, tailored guarantee clauses may be written." [Ref. 126]

As a final issue, Secretary Taft authorized the delegation of waiver authority to the service secretaries and defense agency directors, noting that they may delegate it further "to appropriate levels of command." To elaborate, he stated: [Ref. 127]

With due regard for the concern noted by the Congress and with appreciation for the need of continuing high level management attention, redelegation of this authority should be made only to appropriate levels of command.

With the high degree of Congressional interest and the level of visibility given to the issue by the media, this inclusion was wise in light of the historic reluctance by contracting officials to implement warranty provisions. Delegation of waiver authority too far down the chain of command would be detrimental to the intent of the Act.

E. THE FISCAL YEAR 1985 DEFENSE AUTHORIZATION ACT

Effective 1 October 1984, the Fiscal Year 1985 Defense Authorization Act approved some new warranty language and regulations.

Three major areas of change are found in the Act pertaining to weapon system warranties. As reported by the Senate Armed Services Committee, concern was voiced over the language and provisions of the 1984 Act, Section 794. It was the view of the Committee that an adverse impact on the ability of small business to compete for defense contracts was brought about by 794. In addition, "great concern" was viewed over the insistence upon performance guarantees for the initial production of a new weapons system under the provisions of 794. Finally, the Committee recognized that a contractor for DOD never controls all aspects of the design of a weapon system, and therefore under 794 may have been subjected to unreasonable liability for certain performance requirements. [Ref. 128]

The new Act begins by redefining several fundamental terms. A "weapon system," or "other defense equipment" is now defined as an item or items that can be used directly by the armed forces to carry out combat missions. In addition, only systems which cost more than \$100,000, or for which the eventual total procurement cost is more than \$10 million, are covered. The inclusion of "other defense equipment" is

intended to enlarge the types of equipment covered by warranties as compared to those covered by 794.

Missing from the 1985 Act are the provisions of section 794 that dealt with "other contractors" and components of systems. The Senate Committee noted that the "traditional" method of having the prime contractor obtain appropriate warranties from subcontractors is workable and should be followed by the Government.

To enforce the mandate for contractors to build to specifications, the new Act requires conformity with design and manufacturing requirements, as well as guarantees on essential performance requirements. This allows for the designation of certain performance requirements to be non-essential, therefore relieving the contractor from the potentially costly burden of warranting a non-essential element of the system. [Ref. 129]

The issue over contractors taking prompt action to correct failures has also been readdressed in the new legislation. The language has been reworded to reflect in all situations where the contractor is prepared to promptly remedy the breach of guarantee, he should be allowed to do so. The key word in this issue is "promptly." The speed with which the contractor can remedy the situation will depend to a great extent upon the physical location and condition of the equipment involved. The Government is placed in the position to determine what a reasonable length

of time should be, and what constitutes a contractors reasonable effort to promptly correct the deficiency. The scope of the contractors efforts has been expanded over the wording in 794, and is now stated to reflect that the contractor should take "any and all types of action necessary to correct any breach of the guarantees offered." [Ref. 130]

The issue of waivers and the required notification of legislative bodies of intent to grant waivers has also been modified under the 1985 Act. While the Secretary is still required to notify in a timely manner both the Senate and the House, the language now reads that this action is required only for "major defense acquisition programs," and that notification on minor programs may be "aggregated and transmitted to the committees annually, not later than February 1 for the prior calendar year." [Ref. 131]

One of the most widely debated portions of the new Act was the issue regarding the deletion of the requirement for performance guarantees on the initial production of a new weapon system. The guarantee of a "mature full scale production" system is the bottom line of any warranty program, and to best achieve this both parties should have a full understanding of the capabilities of the system. By allowing for initial production without the statutory guarantee attached, both the contractor and the government will have a better picture of what the system will be

capable of doing. By reducing the risk on the contractor during the volatile first stages of production, the contractors proposal for full-scale production will be more accurate, and the proposal for a performance guarantee should be much more reasonable. [Ref. 132]

VI. CONCLUSIONS AND RECOMMENDATIONS

A. SUMMARY

The objectives of this research effort were to study and analyze some of the recent events that have significantly shaped federal procurement actions during 1984. In doing so, the author has discussed current acquisition policy, competition, the Federal Acquisition Regulation, and the weapon system warranty.

B. CONCLUSIONS

From the issues discussed in this paper, the following conclusions have been reached.

1. The Acquisition Process

All of the DOD components have identified the process by which acquisition will occur under their jurisdiction, and have issued in-depth guidance on the procedures to be used. However, the simplified procurement process mandated by OFPP and manifested in the Federal Acquisition Regulations does not appear to have been totally realized. A proliferation of directives exists in the services regarding the acquisition process, however very little is dedicated to one major issue: acquisition strategy. Without a viable acquisition strategy, it is highly unlikely that program stability can be achieved.

It is widely believed that program stability is one of the keys to holding down cost growth. Without support from the highest levels of management in the stabilization of funding levels and production rates, program turbulence will occur. Equally likely will be the occurrence of cost growth from lower levels of management through the allowance of uncontrolled design and schedule changes.

The Defense Acquisition Improvement Program has done much to increase the efficiency of federal procurement. Increased awareness of duties and emphasis on planning and effective program management have given federal procurement personnel the guidance they require to perform their jobs more effectively. Continued emphasis on the improvement of the acquisition process by all levels of Government is to be expected.

2. Competition In Acquisition

Competition has been long favored as the single best method for reducing costs in acquisition. Including the competition issue early in the development of the acquisition strategy is vital to successful program execution and efficient management. The issue, though, while being "pushed" in every conceivable manner by top federal management, is meeting significant problems in achieving its goal of cost reduction.

Commercial industry is committed to survival, pure and simple. To become a "sole source" in a lucrative government

program is one way of ensuring future solvency. Practices such as "buying-in" and "undercosting" are commonly found in government contracting, and have on occasion been welcomed by federal management. A very real propensity for cost growth exists in this environment, and must be closely monitored to ensure adequate attention is being applied to prevent rampant program cost escalation.

Federal acquisition has methods to combat the buy-in problem, but poor enforcement of the methods and inconsistencies in guidance have left the tax-paying public and federal leadership alike criticizing the process.

Competition, in all cases, is not "free." When directed by higher authority, mandatory competition, such as the development of second sources, can and does cost money. While the long-range benefits may often outweigh the inflated price paid for the material, this may not always be the case. Close attention must be applied to this area to ensure that proper benefit is being derived from competition.

3. The Federal Acquisition Regulation

Rarely in the history of federal procurement has an issue caused as much discussion and debate as the introduction of the FAR. After a gestation period of five years, the FAR became law amid questioning procurement personnel in industry and Government alike.

The major issue of conversation regarding the FAR has centered around simplicity: has it in fact achieved the objective of simplifying the previously complex acquisition regulatory system?

Procurement personnel familiar with the intricacies of the DAR found the FAR to be a breath of fresh air: finally there exists a regulation that is relatively easy to read, readily accessible, and won't break the back of a bookshelf. Their counterparts in industry and some of the civilian agencies, however, who were not intimate with the mechanics of the government procurement system, or who worked only with the FPR, found the going a bit tougher.

While being greatly simplified by the FAR, the complexities of the previous system are viewed by many as returning in the form of individual agency supplements. Agency heads are authorized to approve deviations deemed necessary to meet the unique requirements of the local command, and as such there exists a great propensity for proliferation to once again strike the regulation arena. A very real potential for further confusion exists when one considers that while the supplements can not materially be inconsistent with the FAR, there is nothing to prevent them from being inconsistent with each other.

Legal implications have risen from the simplistic nature of the language in the FAR. While the intent of the rewrite was to clarify the issues, legal precedent has apparently

changed since lawyers argue that different words have different meanings. Thus, even though no substantive change was intended, the editing process has introduced an impediment to the acquisition cycle, as legal precedent will be challenged, and lengthy court battles will have to be endured.

4. The Weapon System Warranty

Responding to the rising costs of repair for faulty design and manufacture in weapon systems, Congress introduced a "Pandora's Box" in the form of the warranty issue. The complexity of the issue as well as the cost were both highly underestimated, and the initial drafting of the legislation was poorly done.

As occurs in any expedition into unexplored territory, not fully preparing for the trip can often prove to be fatal. In the case of the warranty issue, fatality has been narrowly avoided only by the introduction of the Fiscal Year 1985 Defense Authorization Act which has corrected many of the deficiencies of the original legislation. Numerous issues, including the effect upon small business, concurrency, initial language, and the no-fault liability in directed design were revised in the new legislation.

The "uncharted waters" of the warranty issue also presented the problem of having no historical base to substantiate legal and administrative issues. Had proper planning gone into the foundation of the warranty issue, the

resultant reception by the acquisition managers may not have been so adversarial. Legal precedence should have been more clearly stated in the initial legislation, thereby transmitting the true intent of Congress to the program managers. As it was, the intent of Congress was not clear, and the hasty implementation of the issue spawned discontent on the part of some acquisition managers who were faced with what they perceived to be an ill-conceived mandate.

The risk inherent to warranties has become one of the major issues of debate. The buyer shoulders the cost risk in the price of the contract for inadequate product performance. The seller bears the risk that the cost of correcting inadequate performance will exceed the priced amount of the contract. Hence, the desire of Government is to force industry to discipline the design and manufacturing processes which results in compliance with performance specifications, and "better bang for the buck."

It is obvious that a greater data base on the implications of the warranty legislation is required to fully derive the maximum benefit from such performance guarantees. Continued emphasis in this area and compilation of information will ensure that warranties are commensurate with the expense and are suited to the unique requirements of weapon system acquisition.

C. RECOMMENDATIONS

Based on the discussions addressed in this paper, the following recommendations are made.

1. The Acquisition Process

A great degree of initiative is required of all personnel involved with the acquisition process. The program manager must have the ability to surface good ideas that will save both time and money, and must have the foresight to do so in a timely manner.

Program stability must be achieved to prevent uncontrollable cost growth. Continued planning for competition assists in this area, and the potential benefits of multi-year procurement should not be overlooked.

The Defense Acquisition Improvement Program has a significant amount of momentum going into 1985. Only through dedicated emphasis by program managers and key staff personnel will this momentum endure. Improved planning and aggressive decision making is required in all areas of management. The development and execution of a viable acquisition strategy is mandatory for successful program operation.

2. Competition In Acquisition

For a program to be successfully competed, acquisition managers need to be aware of the indications and implications of buying-in. In-depth financial analysis, a

thorough knowledge of accounting procedures, and attention to detail are all required on the part of the contracting community to curb this costly practice.

Numerous methods of cost estimation have been proposed and used by contracting officers to determine "should-costs" and other pricing guides. This practice should be standardized as much as possible, and audited on a "before and after" basis.

When follow-on competition is feasible, it is possible to allow a "buy-in" to win the initial award, followed by an aggressive development of a second source, or "full" follow-on competition. The "low-ball" benefits are then reaped from the initial contract, but the contractors "get well" award is avoided.

3. The Federal Acquisition Regulation

The primary action required of federal acquisition managers to ensure success of the FAR is to insure that the agency supplements are constructed to enhance, not hide, the intent of the Regulation. Proliferation on behalf of the agency supplements will weaken the usefulness of the FAR, making it a more complex and unmanageable document than the one it was designed to replace.

The courts will have to iron out the intricacies of the language changes. Federal acquisition managers and industry officials will need to devote more time and effort to understanding the regulations binding their contracts. No

assumptions can be made in this area; it is vital that both sides of the table know what the contract really says under the FAR.

4. The Weapon System Warranty

To prevent repeating the mistakes of the past, DOD acquisition managers will need to closely monitor the implementation of the new warranty legislation and insure that Congress is aware of any potential problems. There exists a possibility for cost savings under a viable warranty program. However, DOD must put aside the advisarial attitude and work with legislators to enact enforceable warranty policies to achieve this goal. Likewise, both Government and industry contracting personnel will need to expend significant effort to ensure that they fully understand the implications of the legislation. Training in the intricacies of the warranty issue is vital to all, as is a requirement to look to the future for systems and methods to track and enforce warranty provisions.

APPENDIX A

SYNOPSIS OF CURRENT ACQUISITION TOPICS

A. THE ACQUISITION PROCESS

1. Discussion

The acquisition process underwent some modification during the late months of 1983 and on into 1984. The "Carlucci Initiatives" were well entrenched in the procurement community, and great effort was being expended to reform the acquisition process.

2. The Thayer Initiatives

On 12 January 1983 Paul Thayer became Deputy Secretary of Defense, inheriting the Acquisition Improvement Program (AIP) and the 32 "Carlucci Initiatives." Thayer issued a "Second Year-End Report" on 8 June 1983, under the cover of a memorandum titled Guidance on the Acquisition Improvement Program (AIP). Contained within the report was a summary of progress made during the first two years of the AIP, and an observation that 13 of the initiatives had been fully implemented, nine were in various stages of progress, and the remainder required further action to be taken.

Mr. Thayer consolidated twelve of the remaining issues into six areas of concentration: program stability, multi-year procurement, stability in production rates, realistic budgeting, improved readiness and support, and the

encouragement of competition. These were the areas that "offer both the greatest management challenges and the highest potential payoff" according to Secretary Thayer [Ref. 1].

3. AIP's Third Year

William H. Taft IV replaced Thayer in early 1984. Soon after taking office, he released the "Third Annual Report" on the AIP. Noting that considerable progress had been achieved over the previous three years, he also voiced concern that "priority management attention" must be continued so that the momentum would not be lost [Ref. 2]. Citing the six initiatives of Thayer as still being vital to the AIP, Taft added a seventh: the enhancement of industrial base response. This was in reaction to concern over the nation's defense industrial capability to meet surge production needs in the event of an emergency. Taft also discussed program stability, stating that it was vital to the accomplishment of effective program management [Ref. 3].

Solutions to the acquisition problems were offered in the report, starting with the basic decision process of DOD. Aggressive decisions regarding vertical cuts, new starts, and long-range planning on behalf of DOD would be required to achieve greater program stability. The exploration of a two-year budget process was voiced, as was the reviewing of the Milestone II definition as set by DODD 5000.1.

Acquisition strategy was also under review during 1984. Fort Belvoir Virginia was the site of a two-day workshop held in May 1984 that addressed acquisition strategy from the perspective of the tri-services and the private sector. The workshop recognized that the acquisition strategy was a key issue in the program evolution cycle, and that planning the strategy early-on in the procurement process was mandatory to effective management. Lack of simple guidance for program managers was cited by the workshop as being a major hindrance to achieving this goal. The workshop noted that the Defense Systems Management College was in the process of compiling the Acquisition Strategy Guide, and hoped that this publication would fill the void [Ref. 4].

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3. Ibid.
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B. COMPETITION IN ACQUISITION

1. Discussion

Competition received widespread attention during 1984. President Reagan stated that competition "is the single most important source of innovation, efficiency and growth in our economy." [Ref. 1] Rear Admiral Giordano, SC, USN, Chief of the Supply Corps, further stated that: [Ref. 2]

Competition makes good business sense, and I want to make it clear that increasing competition must be a primary objective of all personnel involved in logistics management.

2. The Navy Competition Advocate General

On 4 August 1983, Secretary of the Navy John Lehman officially stated the Department of the Navy Acquisition Management Policy. One of the 15 initiatives for immediate action included in this policy was the establishment of the Department of the Navy Competition Advocate. Naval Material Command (NAVMAT) Notice 5430 of 2 August 1983 officially established the position, and named Commodore Stuart F. Platt, SC, USN, as the first Competition Advocate General (CAG) of the Navy.

In his first letter to the newly designated field competition advocates, the Navy CAG stated: [Ref. 3]

Competitive procurement represents the extension of the principle of fairness into the defense acquisition process. The public trust placed in those who obligate public funds includes the assurance that a fair opportunity will be provided to all who can meet the government's needs.

One effective way to significantly reduce costs, and thereby be able to afford our defense requirements, is to increase the use of competition. The Navy is now emphasizing competitive procurement strongly.

Competition advocates were directed to underline their commitment to the promotion of competition by action. Active participation in all phases of the procurement function were required, with the position to be such that everyone in the acquisition process recognizes that sole source would be considered only as a last resort. Extensive review, planning, expansion in the use of commercial specifications, and making use of market research were also directed.

Standardization through the DOD parts control program and the like equipment concept were two issues pursued by Commodore Platt. Standardization was viewed as being a viable industry process, and could be applied to federal programs to achieve the same results.

In May of 1984 Commodore Platt went on record to state that the competition advocacy program was working, and that Navy managers were reaping the benefits of increased efficiency, lower costs, and greater innovation [Ref. 4]. He cited a 40% increase in the amount of competition from Fiscal Years 1982 to 1983, and noted that \$200 million had been saved by competitively awarding contracts on two classes of ships [Ref. 5].

3. The Competition in Contracting Act of 1984

The Competition in Contracting Act of 1984, (Division B, Title VII, of the Deficit Reduction Act of 1984 [Public Law 98-369]), was a compromise of S. 338, H.R. 5184, and H.R. 2545. It made amendments to the two primary procurement directives of the Federal Government, the Armed Services Procurement Act (ASPA) and the Federal Property and Administrative Services Act (FPASA). The Act, known as "Title VII," applies to all solicitations issued after 31 March 1985.

Title VII establishes competitive proposals and sealed bids as the two competitive procedures to be used by Federal Government. Sealed bids are to be used if four factors are met. First, they must be used if time permits the solicitation, submission, and evaluation of the bids. Second, sealed bids must be used if the award is made on the basis of price and other price-related factors. Third, if it is not necessary to conduct discussions, sealed bids must be employed. Finally, sealed bids must be used if there is a reasonable expectation of receiving more than one bid. If these criteria can not be met, competitive proposals must be requested [Ref. 6].

Title VII deviates from previous policy in stating that procurement officials no longer are required to document his reasons for choosing competitive proposals over sealed bids, or vice versa [Ref. 7]. This gives government procurement

personnel much the same latitude enjoyed by private industry in the source selection process.

Another issue raised by Title VII is that the head of an agency may use competitive procedures, but exclude a particular source, in order to establish or maintain an alternative source or sources. This can be done only if it will result in maintained or increased levels of competition and will reduce overall procurement costs [Ref. 8].

Title VII also allows the head of an agency to limit competition to small business concerns only, but only if all firms within the category are allowed to compete. This does not affect the provisions of Section 8(a) of the Small Business Act [Ref. 9].

Sole source procurement is specifically addressed in Title VII, making such a procurement practice unlawful for the first time unless one of seven specific exceptions are met [Ref. 10].

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C. THE FEDERAL ACQUISITION REGULATION

1. Discussion

Prior to 1 April 1984, there was no single volume containing all government-wide acquisition regulations. Three basic regulations, the Defense Acquisition Regulation (DAR), the National Aeronautics and Space Administration Procurement Regulation (NASA PR), and the Federal Procurement Regulation (FPR) formed the basis for all government procurement guidance.

The Federal Acquisition Regulation (FAR), integrated the three regulations into one clear, understandable document designed to make it easier for government employees to procure goods and services and for contractors to conduct business with the Federal Government.

2. Development of the FAR

Congress had laid the foundation for the FAR in 1974 under the Office of Federal Procurement Policy Act, Public Law 93-400. One of the principle articles of this act was to "establish a system of coordinated - and to the extent feasible - uniform procurement regulations for the executive agencies." [Ref. 1]

The project officially began in January of 1978 when the Department of Defense and the General Services Administration agreed, with the assistance of NASA and other procuring agencies, to take the lead in developing the regulation.

The project was divided into three phases. Phase One, under the direction of DOD and GSA, established project offices and drafted and published the initial regulation for industry and agency review. During Phase Two, industry and agency comments were reviewed by OFPP, which sent them to the appropriate drafting office for consideration and evaluation. The FAR drafting groups then evaluated all comments and recommendations, recording on a permanent record their disposition and the rationale behind it. Phase

Three was titled the "Executive Review," in which the three regulatory agencies - DOD, GSA, and NASA - assisted by other agencies, reviewed the FAR draft to ensure that it was suitable for operational use in the field.

The FAR became effective on 1 April 1984, being published as Chapter 1 of Title 48 of the Code of Federal Regulations (CFR). Customer agencies were afforded the ability to implement their own FAR supplement, however these regulations were not to conflict with, restate, or paraphrase the FAR. They were to conform to its numbering system, and were also to be published in Title 48 of the CFR.

3. Organization of the FAR

The material in the FAR was organized to promote clarity and ease of use. To better fit the normal flow of the acquisition process, the various topics were arranged in generally the same order that one would follow in the preparation of the procurement workpackage.

The FAR is divided into eight subchapters designated by the letters A through H. Each of these subchapters is further divided into parts, numbered consecutively from 1 to 53. (Numbering does not begin anew with each subchapter, however.) The parts are then further broken down into subparts, sections and subsections. These are further divided into paragraphs, subparagraphs, and subdivisions.

To accommodate the simplified restructuring of the regulations, a new numbering system was developed. The first digit(s) represent the part number, followed by a decimal point. The numbers after the decimal point represent the subpart, sections, and after a dash, subsection and any further definition. To illustrate, part 52, subpart 2, section 27, subsection 1 appears as 52.227-1.

4. Maintenance of the FAR

FAR subpart 1.2 covers the FAR maintenance system. Two councils have been named to jointly maintain the FAR: the DAR council (DARC), with NASA included, and the Civil Agency Acquisition council (CAA), chaired by GSA. The CAA council has 12 civil agencies included that provide major procurement missions to the Federal Government.

These councils will solicit comments from all interested parties and coordinate agreement on the proposed changes to the regulation. The final recommendation is then submitted to the FAR Secretariat at GSA, who will review and implement the change if found to be acceptable.

5. Supplementing the FAR

While the FAR is meant to be a single source of guidance for acquisition matters, it was recognized by the drafting committees that agency-specific regulations would have to be allowed.

In order to keep the system as simple as possible throughout its applications, agencies can not repeat or

revise material contained in the FAR. The format and numbering scheme set forth in the FAR Part 1 must be strictly adhered to. Only those unique, internal requirements necessary to implement the FAR in each organization will be allowed in its FAR supplement.

6. Impact of the FAR

Government officials who worked closely with the development of the FAR announced that the FAR contained no major policy changes from prior regulations. However, major transition problems were found in the civilian government agencies and those industry contractors who had dealt almost exclusively with the Federal Procurement Regulation (FPR). Those agencies who had worked under the Defense Acquisition Regulation (DAR) found the transition much easier.

Other problems were voiced by both industry and government managers. Resistance to change was great, and training became a time-consuming process for the federal workforce. Industry viewed the FAR as falling short of the "sweeping reform" promised by DFPP in the 1982 Proposal for a Uniform Federal Procurement System. Stating that only one major change is offered by the FAR, the revision of the contract award formal advertising clause (52.214-10), some viewed this as being a very "fragile and limited" tool [Ref. 21].

7. The Competition in Contracting Act of 1984

The Competition in Contracting Act of 1984 ("Title VII") applies to all solicitations issued after 31 March 1985. Several issues in this Act affect the procedures as set forth in the FAR.

First, Title VII establishes two competitive procedures: "sealed bids" and "competitive proposals." Sealed bids must be used if time permits the solicitations and evaluation process to be completed, award is on the basis of price and other price-related factors, if discussions are not required, and if there is a reasonable expectation of receiving more than one sealed bid. Any deviation from these points requires that competitive proposals be requested.

A second issue is the requirement in Title VII for federal agencies to use advanced procurement planning and market research to achieve full and open competition through the use of proper specifications and timely solicitations. While not totally new to procurement policy, Title VII lends more emphasis to this issue.

Title VII reduces the uniform threshold for submission of cost or pricing data from \$500,000 to \$100,000. However, the legislation does not define the terms "cost data" or "pricing data" and provides no guidance for use of either.

Small purchase is affected by Title VII. Civilian agencies under the Act are authorized to purchase up to

a new ceiling of \$25,000. The FAR addressed special procedures for small purchase, but Title VII directs this comment to the civil branch of procurement.

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D. THE WEAPON SYSTEM WARRANTY

1. Discussion

Section 794 of the Fiscal Year 1984 Department of Defense Appropriations Act requires that written guarantees be obtained in connection with the procurement of weapon systems. The section provides that before DOD can obligate or spend appropriated funds for the procurement of a weapon system, the contractor must warrant that the system and its components are designed and manufactured to conform to performance requirements, and are free from all defects in materials and workmanship that could affect performance.

2. Development of the Guarantee Issue

The Air Force implemented expanded use of warranties under DAR Section 1-324 in 1978 when General A. D. Slay, Commander of the Air Force System Command, ordered application of guarantee clauses to procurement programs such as the Air-Launched Cruise Missile and Advanced Medium Range Air-To-Air Missile [Ref. 1]. The Army published AR 702-13 in January of 1981, setting forth the Army policies for their warranty program [Ref. 2]. Aside from these two programs, little was done in other federal agencies until the DAR council reviewed the area in their evaluation of the material to be included in the FAR [Ref. 3].

The real drive behind warranty reform came from Senator Mark Andrews in his amendment to the Fiscal Year 1984 Department of Defense Appropriation Act, H.R. 4185. This legislation, provided in draft form to industry for comment in mid-1983, was written with an intent to create a commercial marketplace environment out of the DOD acquisition process. Industry replies were often strongly worded, indicating that the proposed legislation would only widen the rift between Government and the private sector, and that it was "hopelessly out of phase with economic reality...and common sense." [Ref.4]

However, congressional support clearly backed the issue, and on 8 December 1983 the bill was implemented into law.

3. The Warranty Provisions

The Fiscal Year 1984 Defense Appropriations Act, as implemented by the 14 March 1984 DOD Guarantee Policy Guidance, requires all DOD fixed-price type production prime contractors for weapon systems to provide a guarantee provision [Ref. 5].

The guarantee must be one of two mandated types. The first, a conformance to performance requirement warranty, requires that if a test or demonstration is required by the contract, a failure to pass this evaluation will result in the contractor taking all required action necessary to conform the item to the contract specifications. All costs incurred during this performance would be born by the contractor. The same contractor efforts are required if a performance requirement details an operation of the system for a specified period of time, and problems are encountered in achieving this requirement.

The second type of guarantee required by the Act is that at the time of delivery to the Government, the contractor warrants the weapon system and each significant component of it to be free from defects in material and workmanship that may cause the system to fail the specified Government performance objectives.

In both of these types of warranties, the contractor is obligated to reimburse the Government for any costs incurred by the Government in procuring such parts from another

source or making the necessary repairs, if the contractor does not take "prompt" action to achieve the specified performance requirements himself.

4. The DOD Guidance

Experiencing difficulties within DOD on the proper way to apply the warranty legislation to defense procurement, Deputy Secretary of Defense Paul Thayer issued a 90 day blanket waiver of the requirement to all DOD on 16 December 1983. Concurrently with this waiver, a "Notice of Draft Guidance on Written Guarantees" was developed and subsequently published in the Federal Register on 20 January 1984. This notice requested that comments on the guarantee issue be submitted to the Office of the Secretary of Defense within 30 days [Ref. 6].

The magnitude of responses recieved over the draft prompted numerous reviews and discussions. The dismay of DOD over the warranty legislation prompted a Senate Armed Services Committee investigation into the provisions in late February, resulting in the realization that there had been inadequate hearings held before the enactment of the legislation, and that, in fact, complex issues remained to be resolved. Further hearings were directed.

On 14 March 1984 the final DOD guidance regarding the implementation of the warranty provision was issued. A GAO review of the guidance was ordered to determine the degree of compliance with the original legislation, resulting in a

statement by GAO that the guidance was consistent with the requirement, but that it also found significant imprecision in the language of the original law [Ref. 7].

The final guidance addressed three major areas: the waiver of the application of the guarantee provision to all cost reimbursement type contracts; a refinement of the definition of a weapon system; and the authorization for contracting officers to use greater discretion in tailoring the guarantee to particular components of a weapon system. In addition, as an aid to the contracting officer, the final guidance provides a "model clause" to be used in fixed-price type contracts. This does not exclude the writing of "custom" guarantee clauses, however, to fit the needs of each particular contract.

5. The Fiscal Year 1985 Defense Authorization Act

Effective 1 October 1984, the Fiscal Year 1985 Defense Authorization Act approved some new warranty language and regulations.

Three major areas of change are found in the Act pertaining to weapon system warranties. The first was in the redefining of several fundamental terms. A "weapon system" or "other defense equipment" is now defined as an item or items that can be used directly by the armed forces to carry out combat missions. This greatly enlarges the coverage afforded over previous legislation.

A second issue was in the contractors "prompt" action to correct failures. The language has been reworded to reflect that in all situations where the contractor is prepared to promptly remedy the breach of guarantee, he should be allowed to do so. The key word here is "promptly," with the Government being placed in the position to determine what a reasonable length of time should be, and what constitutes a contractors reasonable effort to promptly correct the deficiency.

One of the most widely debated portions of the new Act was the issue regarding the deletion of the requirement for performance guarantees on the initial production of a new weapon system. The intent of the change was to allow a reduction of risk to the contractor during the volatile first stages of production. By allowing this, the contractor and the Government will have a more accurate and reasonable proposal upon which to base full-scale production contracts, since they will both have a better understanding of the capabilities of the new system.

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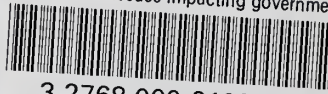
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